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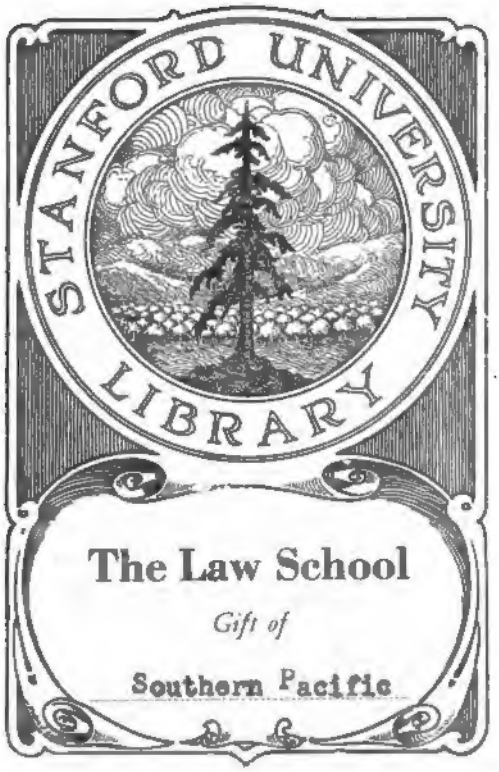
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SUPPLEMENTAL
DIGEST OF DECISIONS
UNDER THE
INTERSTATE COMMERCE ACT

Number Two

BY

HERBERT C. LUST

OF THE

CHICAGO BAR

Author: "Supplemental and Quarterly Digests of Decisions Under the Interstate Commerce Act," Workmen's Compensation Law of Illinois, Annotated," etc.

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To my beloved wife, this volume is affectionately inscribed

PREFACE

In this volume have been digested in full all decisions of the Interstate Commerce Commission, (both reported and unreported), and of the various United States and state courts, construing the Interstate Commerce Act since the publication of the preceding Supplemental Digest, down to September 1st, 1915. This takes in all the decisions down to 36 I. C. C. with the exception of a few which had not been reported.

The book is arranged alphabetically, similar to the preceding Digests, by such subjects as are the ordinary and accepted divisions into which the principles governing interstate traffic would naturaly classify themselves. This can best be seen by referring to the Table of Contents, which immediatly follows, and is a reprint of the entire classification. It is earnestly recommended that readers study the classification as printed in the front of the book. By seeing the entire classification together, it is easier to become familiar with it, and will be found a simple way of finding the decisions desired.

The classification, section numbers, and topics in this Supplement, with the exception of the new subjects added, are exactly the same as in the original Digest, so that when the reader finds decisions of interest in any volume, he can turn to the same subject and section number in this book, and obtain all subsequent distinctions and variations on that principle.

Owing to the rapid develpment of traffic law, some new subjects, such as "Panama Canal Act," have been added which were not in the preceding Digests because at the time of their publication, such divisions of the law had not yet been developed. Others will be found greatly amplified since the publication of the preceding volumes.

It is again earnestly suggested that readers of this book study the Table of Contents very carefully. As about seven thousand points of traffic law are classified, it can readily be understood that familiarity with the classification is necessary to make the book of the quickest available use. It has been attempted to evolve a logical and careful analysis of the field of traffic law and a classification which affords a birdseye view of the entire subject. But no classification is self executing.

Inasmuch as there are many points which may not be logically classified under a particular head, but which may, nevertheless, have

some bearing on it, cross-references are inserted redirecting the reader to such points.

In all cases where it is possible, to do so, a so-called "fact point" has been made. These "fact points" show tersely, but completely, all evidence on which the Interstate Commerce Commission or the court bases its decisions in a particular case. The author has attempted to summarize in an easy, readable style ton-mile revenues, distances, commodities, rate comparisons and other evidence presented in the particular case. Not only therefore, have all traffic principles been classified, but also the economic principles and facts governing each particular case.

The decisions are arranged chronologically under each section, the most recent decisions being placed last, in this respect reversing the former method of treatment, except that United States Supreme Court decisions are placed first. If the decisions of the Interstate Commerce Commission has been modified or reviewed by any court, rehearing denied, dissenting or concurring opinion filed, such fact is noted.

At the back of the book will be found indexes to the cases, commodities and localities involved. A reader interested in any particular case, commodity or locality, by referring to the appropriate index will find reference to every paragraph of the book containing an excerpt from the case, or referring to the locality or commodity indexed.

The period covered in this book is approximately from December 1st, 1913 to December 1st, 1915 and contains over seven thousand principles governing traffic decided in this period.

HERBERT C. LUST. Chicago, Ill., 1915.

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I. APPLICATION OF ABSORBED RATE.

§1. In General.

(a) Because a carrier has seen fit to absorb the full charge of a connecting line, affords no sound basis for an order requiring the continuance of that practice. Kansas City & Memphis Ry. Co. Rate Cancellation, 28 I. C. C. 640, 643.

(b) Except in cases where competition necessitates absorption, a reasonable amount is usually added to through fare to cover transfer of passenger and baggage. Burford v. L. & N. R. R. Co., 31 I. C. C. 182, 184.

(c) Ocean lines absorbed charges of lighters and smaller steamers until opening of Panama Canal. Transcontinental Commodity Rates, 32 I. C. C. 449, 456.

II. DISCRIMINATION.

See Discrimination.

§2. Absorption Subsequent to Shipment.

(a) Subsequent to movement tariff filed, providing for absorption of switching charges. This is the same as a voluntary reduction in rates and no award of reparation can be made on these facts alone. Laclede-Christy Clay Products Co. v. St. L. & S. F. R. R. Co., Unrep. Op., A105.

§3. Refusal to Absorb.

(a) Complainant complained of the refusal of defendants, five railroads serving Chicago, to absorb switching charges on grain transported to Chicago, as discriminatory. The Lowry Tariff, to which they were parties, required the line bringing in or taking out traffic to absorb such connecting line switching charges as might be necessary, but excepted from its provisions coal, coke, live stock and grain. Coal, coke and live stock had been subsequently brought within the provisions of the tariff, but defendants refused to apply the principle to grain brought into Chicago and delivered to industries off their rails. Most of the grain brought to Chicago simply comes there to be marketed on the Chicago Exchange and then goes to destinations beyond, and it is the practice of the eastern carriers to absorb the charges where not absorbed by western carriers. Defendants contended that absorption has for its basis competitive conditions, and that as the eastbound grain movement is competitive between eastern carriers they should absorb the charges. On shipments via the lake there was no absorption. The substance of the complaint lay in complainant's allegation of discrimination suffered by Chicago flour manufacturers, compelled to pay switching charges on wheat milled by them, while flour produced by outside mills was not subjected to charge. Complainants also contended that defendant's line charge to Chicago was unreasonable, to the extent that it did not include switching charges, and that the action of defendants at Chicago was discriminatory as against the grain market at other points where the switching charges were absorbed. HELD, as to the latter contentions, that they had not been put properly in issue. And the evidence showing the milling industry of Chicago to be relatively small, most of the grain milled being from competitive points and that only about 20 per cent of the flour milled in Chicago was sold there; the Commission was of the opinion that the charge of discrimination as to Chicago millers was not established. Inbound roads may fairly be expected to absorb the charges on grain for local delivery, outbound rail carriers on grain taken from Chicago to destinations beyond, while the charges on grain moving out by the lake should be

the subject of arrangement between the shipper and the boat. Board of Trade of Chicago v. A. T. & S. F. Ry. Co., 29 I. C. C. 438.

(b) The question of the absorption of bridge tolls is one of policy with the carrier and it may absorb or not, so long as the alternative adopted does not place an undue burden upon a shipper or locality. Norman Lumber Co. v. L. & N. Ry. Co., 29 I. C. C. 565. 570.

(c) The reduction of absorption of switching charges by line-haul carriers may not be justified. Chicago Switching Charges, 28 I. C. C. 677, 679.

(d) On shipments of cattle from West Toronto, Ont., to Philadelphia, Pa., and Baltimore, Md., for export, carriers failed to provide for absorption of switching charges from Black Rock to East Buffalo. This was corrected. Reparation to be awarded on proof. Swift Beef Co., Ltd., v. C. P. Ry. Co., Unrep. Op., A284.

(e) Routing instructions followed which requested delivery via line which did not absorb switching charges. HELD, not misrouting. Hedden-Clark Lumber Co. v. B. & O. R. R. Co., Unrep. Op., A301.

(f) Carrier filed tariff canceling provision for the absorption of switching charges of connecting and intermediate lines on grain. Provision subsequently restored. Reparation awarded on shipments moving during the interim. Cavers Elevator Co. v. M. P. Ry. Co., Unrep. Op., A349.

(g) It is well settled that if carriers absorb charges of any character from one shipper or refuse to absorb for others, they must do the like for all others similarly situated and entitled to like treatment. Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 559.

(h) Refusal to absorb loading and trimming at Locust Point, Md., when for Buffalo, N. Y., found unreasonable. Dilkes & Co. v. B. & O. R. R. Co., Unrep Op. A430.

(i) The practice of absorbing or refusing to absorb switching charges must be both reasonable and nondiscriminatory. Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 556.

(j) Absorption of switching charges at Norfolk, Va., and refusal to absorb switching charges at Richmond constitutes undue discrimination. Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 559.

(k) Cancellation of absorption of switching charges at City Block and Jackson's Wharf stations on what is known as the "block route," in Baltimore, and elimination of industries located on extension of route on Thames street, found unreasonable. Switching at Baltimore, Md., 30 I. C. C. 581, 584.

(l) The Commission investigated proposed increased rates arising from the cancellation of the absorption of terminal switching charges of from $1.50 to $3 per car on sand and gravel from Janesville, Beloit, and other Wisconsin points to Chicago, Ill.; also from the same points and Carpentersville, Algonquin and Elgin, Ill., to certain points in the State of Indiana within the Chicago switching district. The Indiana points take the Chicago rates, being about 20 miles from the Belt connections with the C. & N. W. Ry. The average distance from the Illinois points of origin to Chicago is 46.5 miles and from Janesville and Beloit, respectively, 91.1 and 90.5 miles. The rate of the C. & N. W. Ry. from the Wisconsin points is 1¾c and from the Illinois points 1½c. To each of these rates there is added an arbitrary when the delivery is to the facilities of a terminal carrier accessible to the C. & N. W. Ry. With some exceptions that arbitrary is 1c per 100 lbs., with a minimum of $6 per car where deliveries are to industries and a somewhat larger arbitrary where deliveries are to team tracks. In many cases the C. & N. W. Ry. does not make delivery direct to a connecting line, in such case the connecting line being reached by a belt line. The switching charge of the -Belt Line is now absorbed by the C. & N. W. Ry. and it is now proposed to make the shipper pay this switching charge, which is $3 for the loaded car and $1.50 for the returned empty. The Belt Ry. of Chicago is just within the city limits of Chicago, connecting West Chicago and South Chicago. For several years prior to January 1, 1914, the interchange switching charges of this road were $2.50 for loads and $1.25 for empties. These charges were increased to $3 and $1.50, respectively, on that date but at the same time certain per diem charges were eliminated. This increase did not affect the shippers of sand and gravel for the reason that the switching charges were absorbed by the C. & N. W. Ry. The

charges of the Indiana Harbor Belt Ry. are now $3.50 for the loaded car and $1.75 for the empty. In many cases the Belt Ry. is used by the C. & N. W. Ry. for interchange but a small number of terminal carriers are reached only by the Indiana Harbor Belt. The C. & N. W. Ry. owns about 20% of the stock of the Indiana Harbor Belt but it has no interest in the Belt Ry. The St. Charles Air Line is a belt line within the switching district of Chicago, over which the C. & N. W. Ry. operates and with which it has connection with almost all the terminal carriers in Chicago. Deliveries were formerly direct or over the St. Charles Air Line. That line runs through the congested part of Chicago. It is claimed by the C. & N. W. Ry. that for this reason it is no longer feasible to make deliveries by this line and it is now necessary to provide a rate by a new route. Protestants insist that this simply deprives them of the use of the St. Charles Air Line, for which there would be no charge, and likewise the B. & O. C. T. R. R., over which the charges would be less than via the proposed lines. By using the Belt Ry. the C. & N. W. Ry. saves a haul of almost 3 miles over its own line and by using the Indiana Harbor Belt a haul of almost 8 miles is saved. Both the Belt Ry. and the Indiana Harbor Belt lie outside the congested area of Chicago. The tariff naming terminal charges at Chicago provided for the application of the flat Chicago rate when that rate was 2.5c per 100 lbs. or more and the earnings $15 per car or more, the shipper having the right when the rate was less to pay 2.5c at a minimum of 60,000 pounds, and thus avoid the paying of a switching charge. The tariff of the C. & N. W. Ry. applying on sand and gravel from Illinois and Wisonsin points to Chicago provided that the rates named should apply only to deliveries on its line or from or to connecting lines and that no terminal or switching charges would be absorbed unless the rate was 3.5c or more. None of the other respondents introduced any evidence but the C. & N. W. Ry. sought to justify its division of each of the proposed increases, upon the decision of the Commission in I. & S. Dockets 88 and 88-A, and Waukesha Lime & Stone Co. vs. C. M. & St. P. Ry. Co., 26 I. C. C. 515. In the former case the Commission refused to permit the C. & N. W. Ry. to increase its rates on sand and gravel from Janesville and Beloit from 1¾c to 3c and held that the rate ought not to exceed the rate from the Illinois points by more than ¼c, which the carrier was then seeking to raise from 1½c to 2c. As stated then, the existing rate of 1¾c was low and there was then no absorption of switching charges. In the Waukesha case the Commission prescribed a rate of 1¾c from Waukesha to Chicago without the absorption of switching. HELD, in the present case the fact that the C. & N. W. Ry. has heretofore absorbed the switching charges does not, standing alone and unsupported by evidence tending to show that the increase resulting from the proposed cancellation of the absorption would be unreasonable or discriminatory, afford a sound basis upon which the Commission may require the continuance of such practice. Following the conclusions in the cases referred to, and considering all circumstances, the carriers have justified the proposed increase of switching charges. Gravel and Sand Switching Charges at Chicago, 32 I. C. C. 291.

(m) The fact that carrier has in the past voluntarily absorbed an intermediate switching charge does not, standing alone, afford a sound basis upon which Commission may require the continuance of such practice. Gravel and Sand Switching Charges at Chicago, 32 I. C. C., 291, 296.

(n) Cancellation of absorption of charges as applied to interstate traffic may be justified. Gravel and Sand Switching Charges at Chicago, 32 I. C. C. 291, 296.

(o) Refusal to absorb switching charges on crude oil at Erie, Kans., while making such absorptions on lumber, coal and brick, not found to result in undue prejudice Great Western Oil Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A, 937.

III. CONTROL AND REVIEW.

§4. In General.

See Control and Regulation.

(a) The Commission cannot compel the trunk line to absorb the charge of a connecting terminal line for gathering freight originating on the latter, consigned to rails of trunk line. Mfrs. Ry. Co., v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101.

(b) The fact that trunk lines voluntarily absorbed rates for years affords no basis for an order to continue practice

if they could not have been required by an order to make such absorptions originally. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 109.

(c) Where switching charges are absorbed by carrier, in passing upon reasonableness, the Commission considers them as though they were to be charged for by the railroad rendering the service and paid for by the shipper. Detroit Switching Charges, 28 I. C. C. 494, 496.

(d) Because one carrier has seen fit voluntarily to absorb the full charge of another previously, affords no sound basis of an order requiring the continuance of that practice. Kansas City & M. Ry. Co. Rate Cancellation, 28 I. C. C. 640, 643.

(e) If the aggregate of the rates for line haul and terminal service is reasonable, the Commission cannot require absorption of terminal charges in the absence of a showing of unjust discrimination. Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 559.

(f) The Act imposes no requirement upon the Commission that in determining a reasonable charge for the interchange movement, it must in some way or other take into its calculations the factor that the charge may be absorbed by a competitor road. Seattle Chamber of Commerce v. G. N. Ry Co., 30 I. C. C. 683, 690.

(g) The fact that a carrier has in the past voluntarily absorbed a certain switching charge, standing alone and unsupported by evidence showing that the discontinuance of the practice would result in an unjust or discriminatory charge to the shipper, does not afford a sound basis upon which the Commission may require the continuance of such practice. Gravel and Sand Switching Charges at Chicago, 32 I. C. C. 291, 296.

IV. REASONABLENESS.

See Through Routes and Joint Rates, §24 (f), (g).

§5. In General.

(a) The Commission does not think it ought to establish a mere switching charge which the competitors of certain trunk lines having extensive terminals can absorb and under which they obtain virtual use of such terminals. Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 627.

(b) Complainant attacked the through rates on coal from mines in Pennsylvania, West Virginia and Ohio to Elmhurst, Ill., as unreasonable, unduly preferential to other coal dealers in the same locality and discriminatory compared with rates to Proviso, Ill. Elmhurst is on the C. & N. W. R. R., 16 miles from its Chicago passenger terminal, three miles beyond Proviso, where the C. & N. W. Ry. connected with the I. H. B. Ry., a belt or switching line, over which it interchanged traffic with the coal-carrying roads from the East. The rate from points of origin to Chicago was $2.10 on bituminous coal, $3.50 on anthracite. The former rate was applicable to Proviso, while on anthracite 40c added to the Chicago rate was absorbed by the eastern carriers. Elmhurst rates were made by combination of the rate to Chicago plus 50c on bituminous coal and 60c on anthracite. Coal dealers at Proviso competed with complainant at Elmhurst. Terminal carriers within the Chicago switching district switched for one another at substantially uniform rates, regardless of cost of service, published rates applying to private sidings and industrial delivery tracks in that city. But this arrangement did not extend to coal, which was provided for in the tariffs of the individual lines, provision for absorption of switching charges on coal being generally confined to "industrial" Chicago; hence dealers in coal were accorded this privilege only where located at the same terminals as were manufacturing industries. Proviso had industries requiring coal, while Elmhurst had none, and therefore, carriers had extended the Chicago rate to the former and not to the latter. The only roads serving Proviso were the C. & N. W. Ry. and the I. H. B. Ry. Where coal was destined for delivery on the C. & N. W. Ry. at Proviso, its charges were absorbed by the eastern lines; but when Proviso was taken as an interchange point between the C. & N. W. Ry. and the I. H. B. R. R. on coal destined to Elmhurst or beyond, although Proviso is but 3 miles from Elmhurst, the published rates from Chicago were applied, the C. & N. W. Ry. out of its receipts paying the I. H. B. Ry. $3 per car. There was but one rate on anthracite and one on bituminous coal from Chicago to Elmhurst, which rates applied alike on coal originating at Proviso and all other points in the Chicago district at which the C. & N. W. Ry. receives coal, applicable as local or proportional rates, according to whether the traffic was local or through.

From all terminals and interchange points at which the C. & N. W. Ry. received coal, the rate to Proviso was 20c on bituminous and 40c on anthracite coal; while on traffic moving through Proviso to Elmhurst, the C. & N. W. Ry. imposed the full rate from Chicago, 50c on bituminous and 60c on anthracite. The Illinois distance rates, except from Proviso to Elmhurst, were equal to or greater than the specific rates. Complainant's coal, all handled in C. & N. W. Ry. local freight trains from Proviso, did not move through Chicago proper, but through its outskirts, via the I. H. B. Ry. to Proviso, where it was delivered to the C. & N. W. Ry. The distance from the western limits of the Proviso yard to Elmhurst was one mile. After deducting the switching charge paid by the C. & N. W. Ry. to the I. H. B. Ry., the remainder of the charge from Proviso to Elmhurst yielded 14.3c per ton-mile on bituminous coal and 17.9c on anthracite, as compared with 4.3 mills per ton-mile for a haul of 191 miles and 2.1 mills per ton-mile for 497 miles, earned by other carriers on transportation of bituminous coal from Southern Illinois to points in northern Illinois. With the minimum weight of 60,000 lbs., the rates of 50c and 60c on bituminous and anthracite would yield per-car revenues of $15 and $18, respectively, equivalent, after deducting the I. H. B. Ry. switching charge, to $4 and $5 per car-mile, respectively. Complainant sold his anthracite at $8.25, realizing a profit of 40c; and his Proviso competitor selling at $8, realized a profit of but 30c. Proviso getting its bituminous coal at the Chicago rate, while complainant paid 50c per ton additional, the former had an advantage in handling bituminous coal. Defendants contended that in constructing through rates to points beyond Chicago, it was not proper, nor was it intended, that the farthest point or terminal in the Chicago district to which, under the tariff naming the inbound rates, the Chicago rate was applicable, should be used as a basing point. The short haul from Proviso to Elmhurst was not comparable either in cost of service or operating difficulties with that from terminals in Chicago proper, from which the haul would be through a more congested district. HELD, the traffic involved was through traffic and must be so considered, regardless of the manner in which the through rate was constructed. While the through rate was not found to be unreasonable, no justification was shown for so wide a difference as existed between Proviso and Elmhurst. The through rates were unduly prejudicial to dealers in Elmhurst and unduly preferential to those in Proviso, to the extent that the rates to Elmhurst exceeded the rates applicable to Chicago by more than 45c per ton on anthracite and 35c on bituminous coal, via any junction point in the Chicago district. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71.

(c) To apply terminal or coast rates to water-locked points, carriers would have to absorb charges of boat lines and grant them a division. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 365.

(d) Out of the rate to Chicago, the Soo Line should allow, and the Grand Trunk should receive, for switching cars of ice from Elsdon to Forty-ninth street and Center avenue, 1 cent per 100 pounds, minimum 60,000 pounds, minimum charge $6 per car. People's Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657 662.

(e) If it be true that absorption must be governed entirely by competitive influences, it may well be argued that only that competition which is compelling should be recognized. Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 558.

(f) The mere fact that a railroad company desired to absorb the switching charge, and after the shipments moved provided for such absorption, is not sufficient basis for finding such charges to have been unreasonable. Lorillard Co. v. P. R. R. Co., Unrep. Op. A-556.

(g) Absorption of elevation charges is made upon the theory that the inbound and outbound movements comprise a through movement and that the grain has been elevated in transit. Whenever the absorption is made the grain cannot lawfully move forward at the balance of the through rate. Merchants Exch. of St. Louis v. B. & O. R. R., 34 I. C. C. 341, 353.

ACCOUNTING.

I. POWER TO REGULATE.
- §1. Jurisdiction of Commission.
- §2. State regulation.

II. APPLICATION TO RATES.
§3. In general.
§4. Necessity of Uniform Accounting.
§5. Construction of Commission's rules.

CROSS-REFERENCES

See Evidence, §15½; Financial Operation, §1 (d).

I. POWER TO REGULATE.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I

(a) Defendant contended that section 20 of the Interstate Commerce Act, in conferring on the Commission power to prescribe the form of accounts, records and memoranda to be kept by carriers, recognizes a distinction between the form and the substance, and that while the Commission, to obtain full and accurate information concerning the affairs of each corporation, must have power to require reports, schedules and accounts necessary to show its true financial condition, yet that the grant must, by fair interpretation and in order not to amount to an unconstitutional delegation of legislative power, stop short of the point where the regulation in its essence goes not to the form, but to the substance, and involves interference with the internal affairs of the corporation. HELD, that no such distinction between form and substance is admissible with respect to the declared object of standardizing railroad accounts and obtaining therefrom full and accurate information concerning the affairs of the respective corporations. In order that accounts may be standardized there must be uniformity; and so far as regulations for uniformity control or tends to control the conduct of the carrier in its capacity as a public servant engaged in interstate commerce, they are within the authority constitutionally conferred by Congress upon the Commission. There is no direct interference with the internal affairs of the corporation; and if any such interference indirectly results, it is only such as is incidental to the lawful control of the carrier by the federal government. K. C. S. Ry. Co. v. United States, 34 Sup. Ct. 125, 130; 231 U. S. 423; 58 L. ed—

(b) Regulations of the Commission promulgated under section 20 of the Act, as amended in 1906, to prescribe a uniform system of bookkeeping and accounting for interstate carriers, do not constitute an abuse of power because rejecting the theory that the cost of property abandoned in making permanent improvements should remain in the property account, rather than be charged to operating expenses. K. C. S. Ry. Co. v. United States, 34 Sup. Ct. 125, 132; 231 U. S. 423; 58 L. ed.—

(c) That preferred stockholders may be deprived of a part of noncumulative dividends from net earnings by the enforcement of regulations prescribed by the Commission, under section 20 of the Commerce Act, as amended in 1906, conferring power to establish a uniform system or accounting for carriers, will not justify the conclusion that such stockholders are thereby deprived of property without due process. K. C. S. Ry. Co. v. United States, 34 Sup. Ct. 125, 135; 231 U. S. 423; 58 L. ed.—

(d) A carrier is not relieved from compliance with regulations prescribing a uniform system of accounting, which reject the theory that the cost of property abandoned in making permanent improvements should be kept in the property account rather than charged to operating expenses because such regulations were promulgated after the carrier had mortgaged its property and issued bonds to raise money for such improvement. K. C. S. Ry. Co. v. United States, 34 Sup. Ct. 125, 135; 231 U. S. 423; 58 L. ed.—

(e) The law places upon carriers the full responsibility for the correct statement of their accounts in accordance with the prescribed rules and regulations. St. Paul and Puget Sound Accounts, 29 I. C. C. 508, 517.

(f) The provisions of Sec. 20 of the Act in reference to the "account records and memoranda" to be kept by common carriers are to be construed in the light of the well-settled principles governing the construction of statutes in derogation of the common law and of a penal nature; and they are to be read not only in connection with the other provisions of the Act, above mentioned, in reference to the obtaining of information by the Commission through other methods than direct examination, in which broad language is used in marked contrast to the limited phrase "accounts, records and memoranda," but also, in such man-

ner that, if reasonably possible, these words may be given the same meaning wherever used, and a harmonious and consistent construction given to the several provisions of the Act in reference thereto. The "accounts, records and memoranda" of common carriers to which the Commission is given the right of access and examination are those whose form it is, by the sentence immediately preceding, authorized to prescribe; and that the phrase, "accounts, records and memoranda" as used in this section of the Act does not relate to correspondence or other original papers or documents in the possession of the carriers, constituting part of their business acts and transactions, but to the records of such acts and transactions, including the movements of traffic as well as accounts of receipts and expenditures, which the carriers are required to enter "on the books and in the manner" and forms which the Commission may prescribe, constituting book entries of their acts and transactions, in the nature of a general system of accounting, which shall be at all times subject to inspection and examination by the Commission. United States v. N. C. & St. L. Ry., 217 Fed. 254, 260, 263.

(g) Congress in adopting Sec. 20 as amended did not have the purpose of giving the Commission authority "to prescribe the forms in which books of accounts shall be kept by railways" and to examine "such books" at all times through expert accountants, nor contemplate that such amendment would give the Commission the right of free and unlimited access at all times to the entire general correspondence of railways, upon all subjects whatsoever, however remote from the purposes of the Act or foreign to the province of the Commission and including, it is to be noted, letters sent to the carriers by their correspondents, as to which the Commission could obviously prescribe no forms. There are in the Act as thus amended no words indicating this intention on the part of Congress, such as a general provision giving the Commission the right to ,inspect all correspondence of carriers subject to the Interstate Commerce Act or all their books, papers and documents, or other apt words of gen eral and unrestricted import; and nothing, in short, that indicates or suggests such intention. United States v. N. C. & St. L. Ry., 217 Fed. 254, 260, 264.

(h) The provisions of Sec. 20 of the Act in reference to the "account records and memoranda" to be kept by common carriers are to be construed in the light of the well-settled principles governing the construction of statutes in derogation of the common law and of a penal nature; and they are to be read not only in connection with the other provisions of the Act, in reference to the obtaining of information by the Commission through other methods than direct examination, in which broad language is used in marked contrast to the limited phrase "accounts, records and memoranda," but also, in such manner that, if reasonably possible, these words may be given the same meaning wherever used, and a harmonious and consistent construction given to the several provisions of the Act in reference thereto. The "accounts, records and memoranda" of counts, records and memoranda" of common carriers to which the Commission is given the right of access and examination are those whose form it is by the sentence immediately preceding, authorized to prescribe; and the phrase, "accounts, records and memoranda" as used in this section of the Act does not relate to correspondence or other original papers or documents in the possession of the carriers, constituting part of their business acts and transactions, but to the records of such acts and transactions, including the movements of traffic as well as accounts of receipts and expenditures, which the carriers are required to enter "on the books and in the manner" and forms which the Commission may prescribe, constituting book entries of their acts and transactions, in the nature of a general system of accounting which shall be at all times subject to inspection and examination by the Commission. United States v. N. C. & St. L. Ry., 217 Fed. 260, 263.

(i) Under the Interstate Commerce Act the Commission is not authorized in the general performance of its duty to obtain through duly authorized examiners direct access to the general correspondence of carriers. United States v. N. C. & St. L. Ry., 217 Fed. 260, 264.

(j) Congress, in adopting Sec. 20 as amended, did not have the purpose of giving the Commission authority "to prescribe the forms in which books of accounts shall be kept by railways" and to examine "such books" at all times

through expert accountants, contemplated that such amendment would give the Commission the right to free and unlimited access at all times to the entire general correspondence of railways, upon all subjects whatsoever, however remote from the purposes of the Act or foreign to the province of the Commission and including, it is to be noted, letters sent to the carriers by their correspondents, as to which the Commission could obviously prescribe no forms. There are in the Act as thus amended, no words indicating this intention on the part of Congress, such as a general provision giving the Commission the right to inspect all correspondence of carriers subject to the Interstate Commerce Act or all their books, papers and documents, or other apt words of general and unrestricted import; and nothing, in short, that indicates, or suggests such intention. United States v. N. C. & St. L. Ry., 217 Fed. 260, 264.

(k) Under the accounting rules prescribed by the Commission, the keeping of accounts with entries of such a vague character as not to disclose the purposes for which they are kept subjects the carrier to prosecution. Financial Relations, etc., L. & N. R. R., 33 I. C. C. 168, 232.

II. APPLICATION TO RATES.

§3. In General.

(a) Proper accounting demands that the records of a company should reflect accurately the transactions relating to the matter recorded, and when accounts fail to reveal a true history of the transactions it can be due to but one of two causes—carelessness or design. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 57.

(b) The unreliability of the property investment accounts of carriers have frequently been commented on by the Commission. Notwithstanding this, they afford a usable basis for a fairly satisfactory study of the course and tendency of the returns; but, while used for purposes of comparison, they are not accepted by the Commission as evidence either of the actual cost or the present value of these properties. The Five Per Cent Case, 31 I. C. C. 351, 361.

(c) The Commission has consistently pursued the policy of giving consideration to cost in establishing rates. What weight to be given the factor depends on the particular case. In re Separation of Operating Expenses, 30 I. C. C. 676, 678.

(d) It is not proper to charge the last increment of traffic with the cost of the additional track and also with a part of the cost of the old track. Both tracks being used in common by two classes of traffic, the value thereof should be apportioned according to the use of the double track. Lum v. G. N. Ry., 33 I. C. C., 541, 554.

§4. Necessity of Uniform Accounting.

(a) Accounting officers understand the true functions of accounts and realize their importance in determining the correct economic condition of the transportation properties with which they are affiliated. Their instincts and training are such as naturally lead them to keep their accounts as they should be kept. They would not have the confidence of their superior officers if this were not the case. But in many instances the accounting officers of carriers have not been left free to follow their natural inclinations in this regard. Irrespective, however, of the influences brought to bear upon an accounting officer to turn him from his true course as an accountant and from his duty, under the law, of keeping the accounts in accordance with the system prescribed by the Commission, it is nevertheless his hand, or the hand of someone immediately under his authority, that makes the wrongful record, and it is the accountant, therefore, to whom the Commission must look in the first instance for the proper carrying out of its rules and regulations. Under the regulations and prescribed form of the Commission the oath of the accounting officer must be attached to the annual report of the carrier to the Commission, together with that of the executive; and, from the necessities of the case, it is the accounting officer who is immediately responsible and whom the Commission will first hold responsible when it becomes necessary to invoke the penalties of law; but the Commission will not hesitate to call to account with even greater severity anyone above the accounting officer in authority who may share in the responsibility for any violations of the accounting rules and regulations which have been prescribed for the use of the carriers that are subject

to the Act. St. Paul & Puget Sound Accounts, 29 I. C. C. 508, 518.

(b) It is unnecessary to emphasize the necessity and importance of statistical reports from carriers that will be uniform and truly reflect their condition. Recent years have witnessed the exposure of glaring instances of the financial wrecking of transportation agencies by those in positions of authority. In many instances the application of correct accounting rules and principles, with proper knowledge on the part of stockholders and public of the conditions thus reflected, would have gone far to avoid such consequences. St. Paul and Puget Sound Accounts, 29 I. C. C. 508, 517.

(c) Coal operators have no uniform system of accounting. Illinois Coal Cases, 32 I. C. C. 659, 673.

§5. Construction of Commission's Rules.

(a) The principal classifications in the Commission's system of accounts for steam railroads were formally announced on June 3, 1907, and became effective July 1, 1907. It did not involve new and untried principles, but was put into effect by the Commission only as a result of prolonged conferences with the accountants of the carriers. While it does not conform exactly to the accounting practices theretofore observed by any particular railroad, it represents the consensus of opinion among the accounting officers of the country as to what system would best suit the situation. St. Paul and Puget Sound Accounts, 29 I. C. C. 508, 516.

(b) Expenditures for road and equipment should be stated in the companies' accounts in cash values. St. Paul and Puget Sound Accounts, 29 I. C. C. 508, 514.

(c) It is improper to include in the cost of construction of a railroad interest items accruing after the date when the road was opened for public service. St. Paul and Puget Sound Accounts, 29 I. C. C. 508, 513.

(d) The item of interest on investment should be divided by the number of cars moving during the past year to determine the present allocation of cost per car. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 517.

(e) Assuming that refrigerator service involves a special extra cost to the banana traffic, it is not proper to set up as an item of expense mileage on the car both ways without crediting the mileage earned on cars returned under load. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 518.

(f) Cost of construction and maintenance of a tunnel not to be charged to local traffic. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 655, 659.

(g) The accounting rules made effective by the Commission Jan. 1, 1907, require all entries in the property accounts of railroads to be stated in terms of cash. The observance of these rules will in time result in showing in those accounts a constantly increasing proportion of cash investment and a constantly decreasing proportion of mere book statement. Hence somewhat greater dependence may be placed upon the ratios of return shown for recent years than upon those shown for earlier years. The Five Per Cent Case, 31 I. C. C. 351, 361.

(h) Net operating income is the amount of its gross operating revenues remaining after a carrier has paid all demands necessarily incident to the conduct of its transportation service, including operating expenses, taxes on the property used in the service, and the rent of equipment and miscellaneous facilities. The Five Per Cent Case, 31 I. C. C. 351, 362.

(i) Net corporate income is the amount remaining for dividends and surplus after interest, leased line rental, and other charges have been paid. A proper return in net operating income might not result in a net corporate income sufficient to meet a carrier's interest and dividend requirements. They are computed on the par value of securities which may differ widely from the amounts actually invested in the property on which an adequate return is due. This is especially true of capital stock, which is shown as a liability at par on the books of the carriers, though the par value may have little or no relation to the amount of cash invested in the property. The Five Per Cent Case, 31 I. C. C. 351, 362.

(j) Revenues actually received by carriers are earned by the whole investment; and it is not correct to say that a part of the investment made since a given date has earned no return. The Five Per Cent Case, 31 I. C. C. 351, 364.

(k) Carriers will be required to keep

an account of additions to their revenues from increases in rates. Five Per Cent Case, 32 I. C. C., 325, 330.

(l) The assignment of the portion of all supervision expenses to the refrigeration service is not an assignment of additional or differential expenses of the refrigeration movement under ventilation. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C., 17, 25.

§6. Cost Accounting.

See Supra, §3 (c); Evidence, §15½.

(a) It is not proper to set up as an item of expense mileage on the car both ways without crediting the mileage earned on cars returned under load. Rates on Bananas From Gulf Ports, 30 I. C. C. 510, 518.

(b) Assumption of a full 100 per cent return movement of empty cars, notwithstanding the fact that a certain proportion of these cars returned loaded with company material, unduly swells the cost of this traffic. Coal Rates from Virginia Mines, 30 I. C. C. 635, 646.

(c) The Commission considered the matter of requiring carriers to separate their operating expenses between freight and passenger services, as outlined in statistical circular No. 3, containing a proposed order requiring railroads having annual operating revenues of $100,000 to report separately the greater portion of their freight and passenger expenses, certain common expenses being left unapportioned. Approximately one-half the mileage of large carriers in the United States make this division voluntarily; not for rate making but for efficiency purposes, though it would seem that a division made under circular No. 3 would not conflict with efficiency accounting. Moreover, the Commission is not interested in these statistics merely for rate-making purposes. And it appeared, (1) that railway cost accounting can be made sufficiently accurate for useful information in dealing with rates; (2) that the information thus obtained is more reliable than that gained from special studies; (3) and would be useful in ascertaining particular cost units among railroads for different years and for the same railroad from year to year; (4) that the expense of making cost analyses would not be prohibitive. HELD, that sufficient reason exists for requiring the extension of the separation of operating expenses between freight and passenger services beyond that heretofore required in the Commission's report. Circular No. 3 will be revised and if sufficient progress can be made carriers will be asked to file a special report of the year ending June 30, 1915; and as early as practicable all carriers of Class I will be required to assign and apportion all operating expenses between freight and passenger services on a basis to be prescribed. In re Separation of Operating Expenses, 30 I. C. C. 676.

(d) Cost accounting can be made sufficiently accurate for useful consideration in dealing with rates. Approximately two-thirds of the operating expenses may be divided satisfactorily. In re Separation of Operating Expenses, 30 I. C. C. 676, 679.

(ef) Length of haul and volume of traffic are among the determining factors in arriving at cost. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(g) A division between freight and passenger service alone will not involve additional expense which can not be justified. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(h) If sufficient progress can be made in the perfection of the circular, carriers will be asked to file a special report for the year ending June 30, 1915, showing the separation between freight and passenger expenses. In re Separation of Operating Expenses, 30 I. C. C. 676, 682.

(i) The Commission has considered cost in many freight cases and has never found it necessary to separate the state from the interstate cost. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(j) Although not possible twenty years ago, it would appear that at the present time approximately two-thirds of the operating expenses of a railroad can be separated in a reasonably satisfactory manner. In re Separation of Operating Expenses, 30 I. C. C. 676, 679.

(k) The Commission believes that it should proceed to work out a complete formula for all expenses and require a separation of all expenses on prescribed bases. In re Separation of Operatng Expenses, 30 I. C. C. 676, 680.

(l) Question of apportionment not helpful in determining whether there would be such a difference between two-

line haul as to make rate applied to single movement insufficient as compensation via through route. Hughes' Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10, 13.

§7. Destruction of Records.

(a) A carrier is acting within its rights in destroying records which have been retained for tne period prescribed by the Commission. Financial Relations, Etc., L. & N. R. R., 33 I. C. C., 168, 234.

ACT TO REGULATE COMMERCE.

I. CONSTITUTIONALITY.
II. INTERPRETATION IN GENERAL.
III. TIME OF TAKING EFFECT.
IV. ENFORCEMENT.
V. AMENDMENTS.

CROSS-REFERENCES

See Loss and Damage, I; Reparation §16 (3g).

I. CONSTITUTIONALITY.

See Discrimination §1; Loss and Damage §2.

(a) The Act of June 18, 1910, amending the long-and-short-haul clause is not unconstitutional as being a delegation to the Commission of legislative power which Congress was incompetent to make. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 991; 234 U. S. 476; 58 L. ed. —

(b) The provision in section 15 of the Interstate Commerce Act that any actions in the United States courts "the findings and order of the Commission shall be prima facie evidence of the facts therein stated"is not unconstitutional because it infringes upon the right of trial by jury and operates as a denial of due process of law, because it only establishes a rebuttal presumption; cuts off no defense, interposes no obstacles to a full contestation of all the issues, and takes no question of fact from either court or jury, and at most, therefore, is merely a rule of evidence. Meeker v. Lehigh Calley R. Co., 35 Sup. Ct. Rep. 328, 335.

(c) It is now firmly settled that railroads, although constructed with private capital, are public highways, subject to public control. In constructing and maintaining such a highway under public sanction, the railway company really performs a function of the state. The Five Per Cent Case, 31 I. C. C. 351, 357.

II. INTERPRETATION IN GENERAL.

(a) Section 3 of the Act forbids any undue or unreasonable preference or advantage in favor of any person, company, firm, corporation, or locality; what is such undue or unreasonable preference or advantage is a question not of law, but of fact. Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370, 373.

(b) To properly construe the Interstate Commerce Act it may be read in the light of the purpose it was intended to subserve and the history of its origin. U. S. v. L. & N. R. Co., 35 Sup. Ct., 363, 368.

(c) That the long-and-short-haul clause imposes upon the Commission in a proper case the duty of refusing an application for relief from the rule, does not render the statute void on the ground that in such a contingency the statute would amount to an imperative enforcement of the clause; for a general enforcement of the clause would not be repugnant to the Constitution. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 992; 234 U. S. 476; 58 L. ed. —

(d) The Interstate Commerce law is not intended for the benefit of carriers, but to protect passengers, shippers, and consignees against unreasonable rates of passage money and of freight and against unfair discrimination between passengers, shippers, and consignees. Central R. Co. of New Jersey v. Anchor Line, 219 Fed. 716, 718.

(e) Section 16 of the Interstate Commerce Act, as amended by the Act of June 18, 1910, was not repealed by implication by section 297 of the Judicial Code. St. L. S. W. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 590.

(f) The primary purposes of the Act was to strike down undue preference and favoritism. Industrial Railways Case, 29 I. C. C., 212, 266.

(g) That portion of section 1 which makes it the duty of every carrier subject to the provisions of the act to provide transportation, including cars, upon reasonable request therefor, must be read into and made a part of that portion of section 1 which deals with the matter of switch connections between common car-

riers and lateral branch lines of railroads. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505.

(h) The Act has been so amended that it is for the Commission to say whether as a matter of fact discrimination exists where a carrier refuses to open its terminals under a contract for the interchange of freight. Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 625.

(i) While the first paragraph of section 3 provides primarily for the equal treatment of shippers, the second paragraph would seem to have been directed to connecting lines and to have intended to regulate the terms of interchange of traffic. Paragraph 2 provides not only for the "receiving" and "delivering" of traffic by connecting carriers, but also for the "forwarding of passengers and property" and "interchange of traffic" in general. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 480.

(j) Act to regulate commerce designed to promote free movement of interstate commerce. Decatur Navigation Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 288.

(jj) Rule of common law underlies practically all constitutional and legislative provisions respecting common carriers. Five Per Cent Case, 31 I. C. C. 351, 357.

(k) Paragraph 2 of section 3 would seem to have been directed to connecting lines, and to have intended to regulate terms of interchange of traffic. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 480.

(l) If function of Commission be to compute sum of intrastate rates and prescribe the result as a measure of interstate rates, actual and direct regulation of interstate commerce by states would result. Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 540, 541.

(m) Congress does not directly or indirectly interfere with local rates by adopting their sum as interstate rate Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 540.

(n) Purposes of Act may not be subserved by establishment of joint rates. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 574.

(o) Where a transaction involved interstate commerce, it is governed by the national legislation on that subject, and the paramount authority of the decisions of the United States Supreme Court construing the statutory declarations of Congress. Zoller Hop. Co. v. So. Pac. Co., 143 Pac., 931, 934.

(p) As used in section 15 of the Commerce Act, providing that if the shipper renders a service "connected with" the transportation, he may receive compensation therefor from the carrier, the expression "connected with" is a synonym of "a part of," and does not mean something, in addition to transportation, that touches, or is attached to, transportation. N. Y. C. & H. R. Ry. Co. v. General Electric Co. (N. Y. Trial Term, 1914), 146 N. Y. Supp. 322, 327.

(q) As the transaction involved interstate commerce, it is governed by the national legislation on that subject, and the paramount authority of the decision of the United States Supreme Court construing the statutory declarations of Congress. X. Zoller Hop. Co. v. So. Pac. Co., 143 Pac. 931, 934.

(r) Every contract or agreement under which a shipment is moved impliedly includes the terms of the Act to regulate commerce, and anything in such contract or agreement contrary to that Act is void, in that the parties contract with reference to the law. Southern Pac. Co. v. Frye & Bruhn (Wash., 1914), 143 Pac. 163, 165.

(s) The Interstate Commerce Act, the provisions of which apply to all corporations engaged in the interstate transportation and which declares that the term "transportation" shall include cars. facilities of shipments or carriage, and all services in connection with the receipt, delivery and handling of property transported, and the Wilson Act subjecting intoxicating liquors to the state laws upon arrival that is, immediately upon delivery, making it unlawful to deliver to any person except the consignee, collect the purchase price, or carry C. O. D. shipments, etc., regulate interstate commerce in intoxicating liquors, to the exclusion of all state action on the subject. Palmer v. Southern Express Co. (Tenn., 1914), 165 S. W. 236, 243.

(t) Congress has, by virtue of the Carmack Amendment to the Interstate Commerce Act, superseded all state statutes and regulations, and the validity of any stipulation in a contract for an interstate shipment which undertakes to limit the carrier's liability is a

federal question, to be determined by the state and federal courts under the rule as declared by the federal courts. K. C. & M. Ry. Co. vs. Oakley (Ark., 1914), 170 S. W. 565, 566.

(u) In so far as later amendments have been made provisions for fixing or changing schedules or standards for freight rates in interstate carriage, the determination in regard to discriminatory practices, and the like, by the Interstate Commerce Commission, and for the investigation of certain matters by that body before suit may be brought in any court, the original Act and the amendments must be read in connection with each other so as to harmonize the entire Act. Western & A. R. Co. v. White Provision Co., 82 S. E. 644, 645.

(v) The Interstate Commerce Act supersedes acts enacted by territorial legislatures on the subject of interstate commerce. C. R. I. & P. Ry. Co. v. Beatty, (Okla. 1914) 141 Pac. 442.

(w) The Interstate Commerce Act does not apply to a case where a trespasser or licensee was injured while riding on the tender of a locomotive with the consent of the engineer. Y. & M. V. R. Co. v. Messina, (Miss. 1915), 67 So., 963, 966.

ACTIONS AT LAW

See Allowances, §14½; Cars and Car Supply, §33; Courts, I; Discrimination, §16; Reparation, §23; Special Contracts, IV.

ADDITIONAL CHARGES AND SERVICES.

CROSS-REFERENCES

See Allowances, §8½ (b), §8 (1) to (7), §12 (1); Back Haul; Branch Lines; Bridge Tolls; Compress Companies and Charges; Demurrage; Drayage Charges; Evidence, §2½; Export Rates and Facilities; Facilities and Privileges, §3 to §16, §15 (aa); Floatage; Lighterage; Precooling; Reconsignment; Refrigeration, §3; Routing and Misrouting, §7 (t); Special Services; Storage; Substitution of Tonnage; Switch Tracks and Switching, §2 (b); Terminal Facilities, §7 (c); Track Storage; Weights and Weighing.

(a) The question whether the switching of carload freight by a carrier on industrial spur tracks is an additional service, for which it is entitled to make a charge over and above the line-haul rate, or is merely a substituted service in lieu of a substantially similar terminal service included in the line-haul rate, but not rendered, is a question of fact to be determined according to the actual conditions of operation, and manifestly one upon which it is within the province of the Commission to pass. Interstate Commerce Commission v. A. T. & S. F. y. Co., 34 Sup. Ct. 814, 818; 58 L. ed. —, 234 U. S. —.

(b) The delivery and receipt of carload freight on industrial spur tracks within a carrier's switching limits in a city, is not an added service for which the carrier is entitled to make, or should make, a charge additional to the line-haul rate to or from the city, where the line-haul rate embraces a receiving and delivery service at team tracks or freight sheds for which the spur track services is a substitute. Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup Ct. 814, 818; 58 L. ed. —, 234 U. S. —, reversing 188 Fed. 229, 929, and affirming the decision of the Commission in 18 I. C. C. 317, 318.

(c) Under section 15 of the Interstate Commerce Act a carrier may perform accessorial non-transportation services for a shipper, provided it be done without unjust discrimination, but cannot be compelled to do so, and while a carrier may permit a shipper to render a service connected with transportation, and may make a just and reasonable allowance therefor, it cannot be compelled to permit such substituted performance of any of its own obligations. It follows, therefore, that when the Commission, instead of merely fixing a maximum allowance to be paid to lumber mill tap lines or to the proprietary companies for switching and other services rendered with the consent of the trunk line in connection with through shipments, directs establishment by the trunk lines of joint rates with such tap lines, and the payment of not exceeding a specified division out of such joint rate for such services, that the Commission holds such services to be not

merely services connected with transportation, but the services of an interstate common carrier engaged in such transportation. L. & P. Ry. Co. v. United States, 209 Fed. 244, 249.

(d) The provision of section 6 of the Interstate Commerce Act, forbidding carriers to extend to persons any privileges or facilities save such as are specified in the tariffs, relates solely to the transportation of persons and property and bears upon the transportation rates and charges. It does not cover privileges and advantages extended to the consignee by the carrier after the termination of the journey, or after the arrival of freight at its destination for reconsignment. United States v. Erie Ry. Co., 209 Fed. 283, 286.

(e) An additional charge may properly be made for an additional service such as the crossing of a river. Paducah Board of Trade vs. I. C. R. R. Co., 29 I. C. C. 593 597.

(f) An additional charge for switching cars to private scales for weighing is not unlawful unless weights so ascertained are used for assessing freight charges. American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C. 350.

(g) Compensation should be made when reconsignment involves extra service. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 656.

(h) The service of loading, furnishing material, and placing in the cars is an additional service over and above the transportation, for which carriers are entitled to receive reasonable compensation. Dunnage Allowances, 30 I. C. C. 538, 542.

(i) There is an additional transportation expense where there is an additional movement. Concentration of Cotton at Points in Arkansas, 29 I. C. C.. 106, 107.

(j) Service over a bridge is an additional service. Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583.

(k) Carrier's tariffs are presumed to provide reasonable charges for the service normally performed. If shipper or receiver demand more, the carrier may assess a reasonable charge therefor. If, because of the nature or condition of the freight, the government finds it advisable to require extra precautions in connection with such shipments, which entail additional service, the carrier is entitled to reasonable compensation therefor. All such charges, in addition to being reasonable, must, of course, be free from discrimination. New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 612.

(l) The additional service involved in out-of-line and back-haul movements of grain to the milling point, is one for which the carrier may properly require compensation. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 152.

(m) Icing causes additional expense in the nature of extra switching and train delays. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 516.

(n) For loading and unloading and all other special services, the carrier may properly make a reasonable charge. Dunnage Allowances, 30 I. C. C. 538, 543.

(o) Where the back haul from Coffeyville to Parsons was an additional service performed by the carrier for its own convenience, a charge exacted for such service was unreasonable. Reparation awarded. Rea-Patterson Milling Co. v. M. K. & T. Ry. Co., Unrep. Op. A-653.

(p) On shipments of yellow pine lumber from points in Louisiana, Arkansas and Texas to Ralston, Nebr., trains are stopped at Gibson, within the switching limits of Omaha, there broken up and cars switched thence to Ralston, to which there is a differential of 1½c over Omaha. HELD, not unreasonable. Cady Lumber Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-590.

(q) Milling-in-transit arrangement is a thing of value to shipper, involving additional service, for which a reasonable charge may properly be mad Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 151, 152.

(r) A transit privilege is something offered to shipper in addition to transportation service. Five Per Cent Case, 31 I. C. C. 351, 408.

(s) If shipper or receiver demands an additional service, or if federal government or the state requires extra precautions which impose upon the carrier an additional service, carrier is entitled to a reasonable compensation therefor. New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 612.

(t) Additional charge of $3 per car

for reconsignment, where basis of charge for reconsigned shipments is changed from the combination of local rates to and from reconsigning point to joint through rate from point of origir to destination justified. Illinois Central Railroad Reconsigning charges. Unrep. Op. A-764.

(u) Where a rail carrier imposes an additional charge for dock service, formerly included in the line haul, the burden is upon the carrier to justify the increased total charges. Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C., 645, 648.

(v) Items of ice haulage and extra switching should be included in refrigeration charge. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 20.

(w) Commission considers that terminal service may be in the nature of an additional service. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 279.

(x) To requlre of carriers an additional movement of freight from floor of warehouse to trucks of consignee or drayman would be unwarranted and arbitrary. Philadelphia Team Owners, Protective Asso. v. P. & R. Ry. Co., 32 I. C. C. 387, 391.

(y) Discontinuance of practice of stopping live stock cars in transit to complete loading or for partial unloading is not unreasonable. Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 324.

(z) Consignee at Brinkman, Okla., rejected their portion of carload of farm wagons from St. Louis, Mo., destined to Hammon, Okla. Charges for demurrage and back haul not found unreasonable. Corporation Commission of Oklahoma v. W. F. & N. W. Ry. Co., Unrep. Op. A-828.

(aa) Car stopped for inspection and an additional horse and mule put in car without taking out new bill of lading or making notation on live stock contract and without knowledge of carrier's agent. Charges not found unreasonable. Russell Bros. v. C. R. I. & P. Ry. Co., Unrep. Op. A-863.

(bb) Charges on raspberries, carload, from Puyallup, Wash., carried to St. Paul, Minn., there partially unloaded, *and forwarded* to Watertown, S. D., not found unreasonable. Stacy Fruit Co. v. Northern Express Co., Unrep. Op. A-868.

(cc) The Commission considered a tariff filed by carriers in Ohio, Pennsylvania and West Virginia, establishing or increasing charges for disposal of slag and other refuse from iron and steel mills. This service had previously been rendered gratuitously. The proposed tariff provided that the carriers would accept slag or other refuse at 20, or 35c per ton, according to nature; but without designating the manner of disposal. HELD, (1) that the carriers might properly make a charge for this disposal service, but (2) a failure to state in the tariff that the carrier "will haul this refuse to some convenient point on its line or the line of a connecting carrier" rendered the tariffs objectionable as not in compliance with section 6 of the Act. Tariffs ordered stricken from files. Transportation and Disposal of Waste Material, 34 I. C. C. 337.

(dd) No reason appears why carriers should be required to transport slag and other mill refuse gratuitiously. Transportation and Disposal of Waste Material, 34 I. C. C. 337, 338.

(ee) A tariff provision fixing rates for the disposal of slag and other refuse which makes no reference to the manner of disposal, is obnoxious to the provision of section 6 that tariff schedules "shall plainly state the places between which property and passengers will be carried." But in a peculiar service of this type it might be a forced construction of the Act to require carriers to designate the specific points at which disposal is to be made. A provision that the carrier "will haul this refuse to some convenient point on its line or the line of a connecting carrier" for the designated rate, is sufficient. Transportation and Disposal of Waste Material, 34 I. C. C. 337, 339.

(ff) Carriers engaging in interstate transportation in connection with the transportation of slag must file tariffs with the Commission, naming their charges for such transportation. Should they even in connection with intrastate hauls use the free disposal of slag as a means of securing shipments from the steel and iron mills, or in any respect as a device to defeat any of the requlrements of the Act, they will be subject to prosecution for violation of it.

Transportation and Disposal of Waste Material, 34 I. C. C. 337, 339.

ADJACENT FOREIGN COUNTRY.

I. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

See Alaska, Canada, Mexico.

(a) It is doubtful if the Commission could require American lines to establish and maintain for the future a rate to Canadian points. Rates on Soda Ash and Other Commodities, 28 I. C. C. 613, 615.

(b) The Commission can require American lines to maintain rates to Canada which are in effect until some affirmative action is taken by some Canadian line, over which it has no control. Rates on Soda Ash and Other Commodities, 28 I. C. C. 613, 615.

(c) While the Canadian Board's jurisdiction to and from the international boundary is absolute, the originating carrier of traffic out of Canada, so far as the Canadian movement is concerned, is subject only to the Canadian Board's jurisdiction; but it should supplement a judgment of the Interstate Commerce Commission. The jurisdiction of the character exercised by either the Interstate Commerce Commission or the Canadian Board practically turns very little on any question except that of jurisdiction over the subject matter. The jurisdiction is "in rem" and not "in persona." To illustrate: The Canadian Pacific Railway Company is a Canadian incorporation. It carries on business, however, not only in Canada but in the United States. With an admitted jurisdiction over the company as such, the Canadian Board should not interfere with the practices and railway requirements which apply on any line either owned or operated by the Canadian Pacific in the United States. Canada can give no right to the Canadian Pacific or any other line to build one foot of track in American territory. The only practicable and proper way of dealing with the matter is for the Canadian Commission not to interfere in a field which is entirely within the jurisdiction of either a state commission, or within the jurisdiction of the Interstate Commerce Commission itself. Under a parity of reasoning, the jurisdiction of the Interstate Commerce Commission is of necessity similarly prescribed. The Michigan Central, for example, in its operations in Canada is subject not to American but to Canadian law. Its property is held and its operations controlled under Canadian statutes. The jurisdiction of both commissions stops at the international boundary. (Can. Ry. Comm., 1914); The Essex Terminal Railway, File No. 24129.

(d) As a matter of practice, the Canadian Board in the past has dealt with international joint tariffs, having regard to the outward movement only, and, speaking generally, has not interfered in any way with any tariff properly filed under American practice applying to the joint movement into Canada. The result is that a situation which otherwise might have presented difficulties has worked out along satisfactory lines and without friction. (Can. Ry. Comm., 1914.) The Essex Terminal Ry., File No. 24129.

(e) Rate on bag paper from Rumford Falls, Me., through the province of New Brunswick, Canada, to Woodland, Me., found unreasonable to the extent that it exceeded a commodity rate subsequently established. Reparation awarded. Grand Lake Co. v. M. C. R. R. Co., Unrep. Op. A-573.

(f) Complainants attacked increases, averaging 1c per 100 lbs., in the joint rates on pulpwood from points in Quebec, Ontario, and New Brunswick, to points in New York as unreasonable. The former rates from Megantic, Noming, and Labelle, Que., to Norwood, N. Y., were 9 1-2, 10, and 9 1-2c; the new rates 10 1-2, 11 1-2 and 11c. The changes in rates were made by the Canadian carriers, the United States carriers concurring; the increases accruing almost wholly to the former. After a hearing at the suggestion of the same complainants the Canadian Railway Board had found the increases reasonable. HELD (1) that the extent of the Commission's jurisdiction over the rates involved was to require United States carriers to desist from concurring in joint rates established by Canadian carriers thus leaving traffic to move on combination rates to and from border points (2) that the findings of the Canadian Board were entitled to weighty consideration by the Commission (3) that the Canadian Board was the proper tribunal to determine the reasonableness of such joint rates. Complaint dismissed. International Paper Co. v. D. & H. Co.. 33 I. C. C., 270.

(g) The extent of the Commission's authority in connection with transportation to an adjacent foreign country is over that portion of the transportation within the confines of the United States. International Paper Co. v. D. & H. Co., 33 I. C. C., 270, 272.

(h) While it is true that the first section of the Act does not in the same terms confer specific regulatory power on the Commission over rates from an adjacent foreign country to the United States as from the United States to an adjacent foreign country, there can be no doubt that the jurisdiction of the Commission over carriers by railroad in this country includes all their lines within its boundaries without regard to where the freight originates. The Commission cannot require the maintenance of joint rates from Canada into the United States, nor control the charges that carriers in Canada may make for transportation services in that country; though it might require the American carriers to desist from continuing joint rates and to establish their own rates for the service within the United States. International Paper Co., 33 I. C. C., 270, 273.

(i) Joint rates from and to Canada are a convenience to the public and to the carriers. They tend to promote easy and prompt movement of traffic and should be continued unless they are unreasonable or otherwise unlawful. International Paper Co. v. D. & H. Co., 33 I. C. C., 270, 274.

(j) Merely because rates from Canadian points are published as joint through rates does not authorize the Commission to determine what the railroads of Canada shall charge for transportation of freight to the border. International Paper Co. v. D. & H. Co., 33 I. C. C., 270, 274.

(k) Where in practically every instance the entire increase in joint through rates from Canadian points accrues to the Canadian carriers for service performed in Canada, and the rates are published by the Canadian carriers, the United States carriers merely concurring, the Board of Railway Commissioners for Canada is the proper tribunal to pass upon the reasonableness of such rates. International Paper Co. v. D. and H. Co.. 33 I. C. C., 270, 274.

(l) The finding of the Board of Railway Commissioners of Canada in a matter properly coming before it is entitled to weighty consideration. International Paper Co. v. D. & H. Co., 33 I. C. C., 270, 274.

ADVANCED RATES.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
(1) Inquiry into reasonableness.
(2) Power to require advance.
(3) Prescribe minimum rate.
(4) To suspend advance.
(5) To suspend reduction.
§2. Limitation on power.
II. JUSTIFICATION OF INCREASE.
§2½. In general.
§3. Burden of proof.
§4. Effect.
§5. Right to advance.
(½) In general.
(1) To avoid reducing other rates.
(2) To equalize rates.
(3) To preserve commodity relationship.
(4) Unreasonably low prior rate.
(5) Congestion of traffic.
(6) Erroneous prior rate.
(7) Expense of competition.
(7½) Paper rates.
(8) To prefer particular locality.
§6. Right to earn.
(1) On bona fide investment.
(2) On unearned increment.
(3) On reproduction value.
(4) On surplus.
(5) For permanent improvements.
(6) All traffic will bear.
(7) Cost of insurance.
III. EVIDENCE.
§7. Change in conditions.
(1) In general.
(2) Increased operating expenses.
(3) Impairment of

credit.
(4) Cessation of competition.
(5) Competition in general.
(6) Disputes concerning divisions.
§8. Presumptions.
(1) Continuance of prior rate.
(2) Temporary reduction.
§8½. Comparisons.
§9. Concerted action.
§10. Economy of management.
§11. Scientific management.
§12. Branch lines.
(1) Operation.
(2) Purchase.
§13. Detriment to shipper.
§14. Benefit to industry.
§14½. Motive of Carrier.
§15. Standard for judging advance.
§15½. Two Line Haul.
§16. Uniformity of advance.
IV. REASONABLENESS OF ADVANCED RATES.
§17. In general.
§18. Circumstances and conditions.
(½) In general.
(1) Low receipts per ton mile.
(2) Water competition.
(3) Heavy and uniform tonnage.
(4) Low-grade commodity.
(5) Ratio of rate to value.
(6) To gain import duty.
(7) Rates in like territory.
(8) Circuitous route.
(9) Use of commodity.
(10) Increased divisions.
(11) Bulk.
V. DISCRIMINATION THROUGH ADVANCE.
§19. In general.
VI. REMEDIES AND PROCEDURE.
§19½. In general.
§20. Injunctions.
§21. Investigation.
§21½. Orders.
VII. REPARATION.

CROSS-REFERENCES

See Claims, §2 (x); Class Rates, §2 (x); Concentrating Rates and Privileges, (b); Divisions, §4 (a), (f); Electric Lines, IV (b); Equalization of Rates, §3 (gg); Evidence, §1½ (a), §14 (l) (s); Facilities and Privileges, §15 (bb); Long and Short Hauls, §5 (m), (nn); Minimums, §7 (k); Passenger Fares and Facilities, §2 (1); Storage, §2 (r); Switch Tracks and Switching, §4 (q), (w), (x), §12 (b); Terminal Facilities, §5 (c); Through Routes and Joint Rates, VI, §13 (op), §15 (b) (pp).

I. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, I; Switch Tracks and Switching, §6 (h).

§1. (1) Inquiry into Reasonableness.

(a) In proceedings under section 15, relating to suspended schedules proposing increases of rates, the issue is not solely whether the rate is just and reasonable, as appears from the fact that the section authorizes the Commission to enter upon a hearing concerning the "propriety" of a rate. This term is comprehensive enough to cover all the considerations entering into a rate, such as its reasonableness per se, its relative reasonableness, or its preferential or prejudicial character. The provision as to burden of proof would seem to mean, simply that when the new rate is an increased rate, as to one issue only, namely, whether it is just or reasonable, the burden of proof shall be on the carrier. While, when the rate is an increased rate this particular issue is necessarily a part of the case, it does not follow that it must be the sole issue. Even though the Commission is always to consider whether an increased rate is just and reasonable, it is not precluded from considering the rate from other viewpoints, such as that of its preferential or discriminatory character. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 420.

(b) Where proposed rates involve increases or decreases they are new rates, as to which the Commission's jurisdiction is full and complete under section 15, paragraph 2; and if rates in which no change is proposed be not new rates, then they are necessarily rates "demanded, charged or collected," and their investigation proper under section 15,

(c) There is nothing in section 15 which either in terms or by implication limits the Commission's suspension power over rates, regulations and practices effecting increases in rates. The only reference to increases is in the portion of the section dealing with the burden of proof, and this surely cannot have the effect of limiting the general terms of the preceding portion of the section dealing with the suspension power. In practice the Commission has frequently suspended schedules where no increases were proposed, but where the new rates threatened to create discrimination. Switching at Galesburg, Ill., 31 I. C. C. 294, 297.

(d) An advance in rates may be found unreasonable in part. Ellicott Brick Co. v. B. R. & P. Ry. Co., Unrep. Op. A-560.

(e) When Commission enters upon an investigation of proposed increased rates, the propriety as well as the reasonableness is in issue. Transcontinental Commodity Rates, 32 I. C. C. 449, 451.

§1. (4) Power to Suspend Advance.

(a) The provision of the act governing the suspension of new schedules gives to the Commission authority to make such order in reference to a rate, fare, charge, classification, regulation, or practice as may be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice became effective. Rates on Lumber and Other Forest Products, 30 I. C. C. 371, 373.

(b) The Commission is without authority to suspend a rate after it has become effective. Lower rates had become effective but the carrier thought they had been suspended, charges collected on the basis of former and higher rate. HELD, reparation should be awarded upon the basis of the published and lower rate. Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep., Op. A481.

(c) It is the custom of the Commission to suspend new rates when it appears that they will create unlawful discrimination. Some tariffs providing for reduced rates to many points have been suspended solely upon the ground of discrimination. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 420

(d) A petition to suspend a rate will be denied where it appears the rate has already gone into effect. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 416.

(e) No limitation of Commission's suspension power in section 15. Switching at Galesburg, Ill., 31 I. C. C. 294, 296, 297.

(f) When the Commission suspends the operation of a tariff it is contemplated that the rates sought to be increased or otherwise changed are to be continued in effect pending the investigation. In other words, it is expected that the status quo will be maintained until the proposed change therein can be fully investigated. Class Rates between stations in Louisana, 33 I. C. C. 302, 303.

§2. Limitation on Power.

(a) Clearly, when the proposed rates involve increases or decreases they are new rates, and as to them the Commission's jurisdiction is full and complete by virtue of the second paragraph of section 15. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508.

(b) Commission has no authority to approve rate increases with a view to stimulating business. Five Per Cent Case, 31 I. C. C. 351, 426.

§2½. In General.

(a) The Commission considered a proposed increase in the proportional rates on tomatoes from Jacksonville, Fla., to destinations west of the Mississippi River. To illustrate the change contemplated, taking Kansas City as the point of destination, the existing rates from Jacksonville were 39c per crate of 50 lbs., minimnm 480 crates (24,000 lbs.), and the rates proposed were 41½c, minimum 400 crates (20,000 lbs.) There was no change in the proportional rates to Jacksonville, the minimum applicable to which was 420 crates. Under the higher minimum a heavier loading would probably be secured, resulting in a saving of equipment in time of car shortage. But, in any event, the decrease in minimum would not offset the increase in rate. HELD, that respondents have not justified the proposed increase. Tariff under suspension canceled. Rates on Tomatoes from Jacksonville to Kansas City, 29 I. C. C. 522.

(aa) The Commission should not be expected in every case to check superseding issues of all tariffs to determine

whether or not, by any possible construction, a rate may be increased via a possible route over which there may or may not ever have been any movement. New England and Canadian High Explosives Rates, 29 I. C. C. 697, 698.

(b) Carriers must be regarded as estopped from advancing Duluth rate. Transcontinental Rates from Group F, 28 I. C. C. 1, 6.

(bb) Before they may fairly ask the general public to share further in casting their burdens, the railroads must themselves properly conserve their sources of revenue by making every service rendered by them contribute reasonably to their earnings. Industrial Railways Case, 29 I. C. C., 212, 218.

(c) The general public interest is advanced in a very direct way by the reasonable success of railroad investments under rate schedules that reasonably respect the rights of shippers. But if further burdens through an increased scale of rates may justly be imposed on the general public, unlawful concessions, rebates and preferences in the interest of a small proportion of the shipping public should be eliminated from the practice of carriers. Industrial Railways Case, 29 I. C. C., 212, 218.

(cc) Qualifying phrase in tariff inadvertently omitted. Correction, making advance, justified when circumstances explained. Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 46.

(d) Cost of betterments charged to operating expenses no justification for increase in rates. New York and Cheese Rates, 28 I. C. C. 330.

(e) Carriers not justified in increasing rate claimed to be unduly low which is established under compulsion of competitive conditions. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 557.

(f) Defendants canceled class rate on cold-pressed cottonseed cake, which was same rate applied to fertilizer. Commodity now used for stock food, and a commodity rate was established. This change was in effect an advance, and not a newly established rate on a new commodity, which advance defendant has justified. Mary Mac Plantation Co. v. Y. & M. V. R. R. Co., A109.

(g) Though protest is made after an increase in rates has become effective, nevertheless the burden of proof as to its reasonableness is upon the carrier. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 419.

(h) The burden to show that proposed increased terminal charges are just and reasonable is upon the respondents. Switching at Baltimore, Md., 30 I. C. C. 581, 583.

(i) Before carriers may fairly ask the public to share further in carrying their burdens, the railroads must themselves properly conserve their sources of revenue by making every service rendered by them contribute reasonably to their earnings. Industrial Railways Case, 29 I. C. C. 212, 218.

(j) The Commission will not shrink from sanctioning general rate increases upon the adequate showing of need of additional revenues so far as this can be accomplished under reasonable rates, when the carriers properly conserve their sources of revenue. Industrial Railways Case, 29 I. C. C. 212, 218.

(k) Roads should not be permitted to make a general rate increase until they have eliminated unlawful concessions, rebates, and preferences. Industrial Railways Case, 29 I. C. C. 212, 218.

(l) Some 112 railroads, comprised in thirty-five railroad systems serving official classification territory, with capital obligations outstanding amounting to $6,389,535,638 and annual operating revenues of $1,424,119,991, joined to secure approval of a 5 per cent increase in freight rates. Existing class rates and the underlying basis of commodity rates between New York and Chicago had been in effect without change for more than twenty-five years. While over 24 per cent of their revenue was derived from their passenger train service, no increases in fares were proposed. The case was in continuation of Advances in Rates —Eastern case, 20 I. C. C. 243, 247, in which the Commission had denied the increases prayed for. The proposed increases averaged 5 per cent, but ranged from 3 to 50 per cent, including a minimum increase of 5c in all rates named in cents per ton when less than $1.00. The proposed increases did not extend to anthracite coal moving to Atlantic ports, interstate traffic confined to New England, nor to certain rates on sugar, iron and zinc. The proposed advances would have produced at least $50,000,000 additional revenue, being 5 per cent on

$1,000,000,000. **Do the Railroads Need Increased Revenues?**—The carriers contended (a) that the rate of return in net operating income was declining; (b) that the principal cause of decline was the steady increase in operating expenses due to increased requirements; (c) that there had been no return on money invested in railway facilities since 1910; and (d) that the effect was to impair credit of railway companies so seriously as to check normal construction and development. The net corporate income of the various carriers averaged 8.07 per cent of their outstanding capital stock, but differed widely, ranging from 24.93 per cent earned by the C. R. R. of N. J. to a deficit of 13.74 per cent on the stock of the C. H. & D. R. R.; but these differences sprang largely out of difference in management. While many volumes of evidence were adduced, based on carriers' accounts, no evidence was advanced to establish either the cost of their properties or their present value, the book value being adopted as the "nearest and most accurate reflection" of railroad values. From these figures the Commission prepared the following table: (See page 22)

During this fourteen-year period property investments advanced 59 per cent and operating revenue 110 per cent, while operating expenses increased 133 per cent and taxes in about the same proportion. But the decrease in the capital cost per unit of production was so great that the ratio of net operating income to property investment was larger in 1913 (5.36 per cent) than in 1900 (5.28 per cent), reaching a maximum of 6.31 per cent in 1906. Though the operating ratio increased from 64.62 to 71.77 per cent, the tendency toward a smaller margin of profit was common to many branches of commerce and industry. While there was an upward tendency in both gross and net operating revenues since 1900, the ratio of net operating income had declined, the increases in operating revenue being offset by the advance in operating expenses and taxes. Gross revenues which had, compared with property investments, increased from 1900 to 1907, had thereafter remained stationary, owing, not to relative decrease in the volume of traffic, but to decreased return per ton mile and per passenger mile; due in the case of freight to causes other than a lowering of rates, and in the case of passengers to local legislative action. The ratio of revenue to investment was also depressed by increased investments in improved equipment, elevation of tracks, construction of expensive terminals, the Penn. R. R. station in New York having alone cost $114,000,000 and the N. Y. C. terminal $82,000,000. From 1900 to 1913 the ratio of operating expenses to operating revenue had increased from 64.62 to 71.77 per cent. This resulted from the installation of heavier locomotives, cars, and rails, stronger bridges and turntables, more ballast and cross-ties, and the reduction of grades and curves; and from general and outside operations, such as boat and ferry lines, terminal transfers, grain elevators, restaurants, and other nonremunerative services. The price of fuel had increased 7.7 per cent from 1910 to 1913, and wages of employees 9.02 per cent from 1909; the latter due partly to the full crew and hours of service laws, but principally to special terminal services. It had been the policy of railway executives, in order to pay fixed dividends, to keep maintenance expenses in line with gross revenues, notwithstanding extensive reconstruction of roadways and equipment. Depreciation from 1908 to 1913 was 2.53, 2.34, 2.55, 2.25, 2.47 and 2.79 per cent of value of equipment; and renewals were .50, .52, 1.00, .81, .85 and .98 per cent. The ratio of taxes to operating revenue ranged from 3.26 per cent in 1900 to 3.83 per cent in 1913, and the ratio of taxes to property investment from .550 to .867 per cent. The ratio of capital stock to total capital obligations had declined from 45.39 per cent in 1900 to 40.06 per cent in 1913; and the rate of interest decreased from 4.55 per cent to 4.07 per cent during the same period. The need of a higher net income varied with the different railway systems involved. Ten systems, aggregate capital $811,403,851, operated in 1913 at an average expense ratio of 63.97 per cent and earned net operating income equal to 8.55 per cent on property investment and net corporate income equal to 16.92 per cent on outstanding capital stock; on three other systems the figures were, aggregate capital $3,116,557,610, operating ratio 73.73 per cent, operating income 5.16 per cent, net corporate income 9.05 per cent; on five New England lines, capital $654,011,846, expense ratio 70.33 per cent, net operating income 5.56 per cent, net corporate

PROPERTY INVESTMENT (BOOK VALUE) AND OPERATING RETURNS OF 35 RAILWAY SYSTEMS IN OFFICIAL CLASSIFICATION TERRITORY, YEARS 1900 TO 1913, INCLUSIVE.

Year.	(a) Property invested.	(b) Total operating revenue.	(c) Ratio of operating revenue to property investment, per cent.	(d) Total operating expenses.	(e) Operating ratio, per cent.	(f) Net operating revenue.	(g) Taxes.	(h) Hire of equipment, joint facilities, etc. (net).	(i) Net operating income.	(j) Ratio of net operating income to property investment, per cent.
1900.....	$3,925,000,000	$ 678,000,000	17.16	$ 438,000,000	64.62	$240,000,000	$22,000,000	$9,000,000	$209,000,000	5.28
1901.....	4,056,000,000	724,000,000	17.85	469,000,000	64.82	255,000,000	23,000,000	9,000,000	223,000,000	5.50
1902.....	4,141,000,000	780,000,000	18.83	511,000,000	65.49	269,000,000	25,000,000	8,000,000	236,000,000	5.70
1903.....	4,300,000,000	871,000,000	20.26	585,000,000	67.15	286,000,000	26,000,000	9,000,000	251,000,000	5.85
1904.....	4,434,000,000	901,000,000	20.32	621,000,000	68.87	280,000,000	27,000,000	8,000,000	245,000,000	5.52
1905.....	4,605,000,000	945,000,000	20.52	642,000,000	67.88	303,000,000	27,000,000	9,000,000	267,000,000	5.79
1906.....	4,818,000,000	1,045,000,000	21.69	699,000,000	66.83	346,000,000	33,000,000	9,000,000	304,000,000	6.31
1907.....	5,092,000,000	1,141,000,000	22.41	781,000,000	68.45	360,000,000	36,000,000	6,000,000	318,000,000	6.25
1908.....	5,259,000,000	1,095,000,000	20.82	777,000,000	70.97	318,000,000	36,000,000	5,000,000	277,000,000	5.26
1909.....	5,344,000,000	1,084,000,000	20.28	737,000,000	67.97	347,000,000	39,000,000	11,000,000	297,000,000	5.55
1910.....	5,621,000,000	1,237,000,000	22.01	832,000,000	67.27	405,000,000	43,000,000	9,000,000	353,000,000	6.28
1911.....	5,950,000,000	1,255,000,000	21.09	888,000,000	70.71	367,000,000	46,000,000	10,000,000	311,000,000	5.23
1912.....	6,098,000,000	1,293,000,000	21.20	915,000,000	70.75	378,000,000	51,000,000	11,000,000	316,000,000	5.19
1913.....	6,281,000,000	1,424,000,000	22.67	1,022,000,000	71.77	402,000,000	54,000,000	11,000,000	337,000,000	5.36
Average..	4,996,500,000	1,033,786,000	20.69	708,357,000	68.52	325,429,000	34,857,000	8,857,000	281,715,000	5.64

SYSTEMS INCLUDED IN ABOVE STATEMENT.

Ann Arbor R. R. Co.
Baltimore & Ohio System.
Bessemer & Lake Erie R. R.
Boston & Maine R. R.
Buffalo & Susquehanna System.
Buffalo, Rochester & Pittsburgh Ry.
Central New England Ry. Co.
Central R. R. Co. of New Jersey.
Chesapeake & Ohio System.
Chicago, Indianapolis & Louisville Ry.
Chicago, Terre Haute & Southeastern R. R.
Cincinnati, Hamilton & Dayton Ry. System.
Dayton & Union R. R. Co.
Delaware & Hudson R. R. System.
Delaware, Lackawanna & Western R. R.
Erie R. R. System.
Hocking Valley Ry. Co.
Kanawha & Michigan Ry. Co.
Lehigh & Hudson River Ry. Co.
Lehigh Valley R. R. Co.
Maine Central R. R. Co.
New York Central Lines (East and West).
New York, New Haven & Hartford R. R. Co.
New York, Ontario & Western Ry. Co.
Norfolk & Western Ry. Co.
Pennsylvania System (East and West).
Pere Marquette R. R. Co.
Reading System.
Rutland R. R. Co.
Toledo, St. Louis & Western R. R. Co.
Wabash Pittsburgh Terminal Ry. Co.
West Side Belt R. R. Co.
Wabash R. R. Co.
Western Maryland Ry. Co.
Wheeling & Lake Erie R. R. Co.

income, 3.98 per cent; and on the seventeen remaining systems, capital $1,807,213,931, expense ratio 75.15 per cent, net operating income 2.15 per cent, and net corporate income 0.12 per cent. **Shall the Proposed Advance in Freight Rates be Approved?**—While the cost of transportation service had increased generally, as to some traffic it had not increased at all, and on some again not in the proportion it had increased on other traffic. Again the increased operating ratio was due, in a large measure, to passenger service, relatively much less profitable than freight service. Thus on the B. C. & A. Ry. the percentage earned net from freight service was 40.86 per cent, from passenger service 6.00 per cent; and on the N. & W. Ry., 35.75 per cent on freight and 27.74 per cent on passenger service. On the Penn. R. R. from 1907 to 1913 there was a decrease of 1.75 per cent in the ratio of freight expenses to revenue, an increase of 18.51 per cent in ratio of passenger service expenses to revenue; and on the Wabash R. R. an increase of 8.66 per cent on freight service and 10.85 per cent on passenger service. In 1911 property devoted to passenger service earned less than one-half of 1 per cent, that devoted to freight service 7.09 per cent. Revenue per passenger mile in trunk line and New England territory ranged from 1.157 to 2.472c. In central freight association territory fares had been reduced from 3 to 2c per mile, resulting in losses to ten carriers of approximately $18,000,000. On the other hand, freight-train efficiency had increased faster than wages; for a period of ten years the former increasing on various lines from 20.81 per cent to 110.58 per cent, while wages increased from 18.14 per cent to 37.89 per cent. The operating expense ratio was high on expedited service in carload freight; lowest on slow trains moving coal and ore. On the N. Y. C. R. R. and Penn. R. R. the ratio was 73.09 and 73.56 per cent; and on the P. & L. E. R. R. and C. V. R. R., 49.81 and 66.89 per cent. **Differences in Territorial Characteristics.**—New England territory had a population of 1,389 persons per mile of line; trunk line territory, 889 per mile; and central freight territory only 506 per mile; and the percentage of rural population was respectively 17, 30 and 46 per cent. Freight revenue per mile operated was on the New England lines, $6,652; trunk lines, $10,181; and central freight territory lines, from $5,362 to $6,866. On seventeen systems in trunk line and New England territories the ratio of net operating income to property investment averaged 6.52 per cent; on thirty-eight roads in central freight association territory, 4.72 per cent; on twenty-eight other lines but 3.39 per cent. The greater reduction in earnings on the latter lines was due (1) to the larger decrease in the rate per ton mile, 5.61 mills in 1913 as compared with 6.94 mills on the New England and trunk line roads; and (2) to the difference in character of freight handled on the twenty-eight central freight lines, but 48.43 per cent of the tonnage being mine products as compared with 60.47 per cent on twelve trunk line systems. First class rates under the central freight association scale were 7.5, 7.5, 7.5, 14.5 and 18c for distances of 10, 20, 30, 60 and 75 miles, as compared with the Illinois scale of 12, 15, 18.1, 24.8 and 27.1c, and the proposed Michigan scale of 14, 16, 18, 23 and 25c. The former scale was based on the rate from Pittsburgh to Chicago, which was 60 per cent of the New York-Chicago scale and this rate, amounting to 45 per cent first class, extended 475 miles. The rate from Pittsburgh to St. Louis was 64 per cent of the New York-St. Louis rate, and the rate to Mississippi crossings in Iowa, 2c higher. **Conclusions.**—It having been shown that class rates in central freight association territory are on a lower scale than existed elsewhere in the country and that many commodity rates were too low, HELD, that such rates may be increased by 5 per cent, provided, (a) that no increases be made on coal, ore, brick and other heavy commodities; (b) the proposed minimum increase of 5c per ton, on commodities moving under rates in cents per ton when less than $1 per ton be denied; (c) that all proposed increases exceeding 5 per cent be denied; and (d) that all rates in central freight association territory controlled by unexpired orders of the Commission remain as established. HELD FURTHER, that the proposed increases in trunk-line and New England territory and in official classification territory generally, by all-rail and rail-and-water routes had not been justified. **Effect on Trunk Lines of Increases in Central Freight Association Territory.**—These increases would afford some relief to all lines in official classification territory except New England lines. The

great trunk lines had large mileage in this territory. Thus, the total mileage of the N. Y. C., Penn., B. & O., Erie, C. & O., and N. & W. systems were respectively 12,690; 11,228; 4,480; 2,562; 2,338; and 2,035 miles; of which 8,938; 4,838; 2,443; 869; 285 and 277 miles were in central freight association territory. The other systems operating in trunk line territory, having a highly profitable coal traffic were not in need of assistance, except three, the B. & S., N. Y. O. & W., and W. M. R. Rs., whose lack of prosperity was due to over-capitalization. **How Carriers May Increase Their Revenues.**—None of the carriers having proposed any course except the so-called 5 per cent increase in rates, the Commission made an independent investigation and made the following tentative proposals:

1.

Passenger fares should be increased, and extra charges for special accommodations made; and that the public may be assured of the necessity of raising fares, carriers should separate passenger and freight operating expenses.

2.

Carriers should examine carefully their freight rates, rules and regulations, with a view to increasing rates found to be clearly unremunerative.

3.

Carriers to ascertain to what extent expedited movement of freight and transit privileges constituted an unjust burden on them or resulted in unjust discriminations among shippers. A carrier should avoid traffic on which it could only lose money, and cooperate with other carriers in investigating the expenses incurred in soliciting traffic, particularly at points off their own lines.

4.

The practice of granting free transportation of passengers and private cars should be still further restricted. During eleven months of 1913 some seventy-eight roads granted 629,668 annual passes, 408,848 short-term passes, and approximately 5,792,500 trip-passes. Private cars handled free during the same year on eighty-eight of the roads would, at tariff rates, have yielded $644,250.79.

5.

Substantial economies should be effected in the use and operation of freight cars. In official classification territory, the time a car was moving in trains did not average three days out of thirty, was under load only two out of those three days, and the average load was but 58 per cent of capacity. While car capacity increased from 30.9 to 39.5 tons between 1903 and 1912, the average load increased only from 19 to 22.8 tons; and while the total number of cars per train increased 12.1 per cent, loaded cars increased only 8.2 per cent. Car detention should be minimized by a proper development of freight train schedules.

6.

Greater saving in fuel, which now costs the railroads of the United States in excess of $250,000,000 a year, should be effected.

7.

Without reducing wages a reduced unit labor cost should be effected. Unnecessary expenses attending the infraction of the laws governing interstate commerce should be eliminated.

8.

Properties held by carriers for purposes other than transportation, aggregating $684,000,000 in official classification territory, should be sold.

9.

Carriers should investigate to ascertain to what extent the cost of construction, of acquiring properties or capital, or of operation was increased through the holding by directors, officers, or employes of interests in other concerns with which the carriers had business.

10.

All expiring contracts with sleeping-car companies should be carefully reviewed before renewal.

Differences in Freight Rate Yields.—There were for similar lengths of haul very wide variations in car-mile earnings on analogous commodities. Thus the average net revenue per loaded car mile on iron ore and cement was 20 and 22c, respectively; on pine lumber and wood pulp, 14c and 90c; and on wheat and flour, 13 and 9c. On some lines absorptions and deductions barely left enough revenue to pay for use of equipment; thus, on domestic flour shipped via the B. & O. R. R. but 2.84 mills was earned per ton mile for 564 miles; and steel rails (export) shipped via the Erie R. R. earned but 1.97 mills per ton mile for 562 miles. The average yield on copper bullion was only 2.73 mills per ton mile and 11c per car mile. **Is There a Crisis or Cause for Alarm?**—While carriers insisted that need of relief was so urgent

that the situation must be relieved at once by the proposed 5 per cent increase, it appeared that they had disposed of nearly $500,000,000 of securities since Jan. 1, 1914. The N. Y. C., Penn., and B. & O. systems, reaching practically all parts of official classification territory, in 1913 earned 11.08, 9.64 and 7.35 per cent, respectively, on outstanding capital stock. HELD, that while a few of the railroads in official classification territory are facing financial difficulties, there is no crisis in their condition as a whole. **Net Operating Results for the Year Ending June 30, 1914.**—During the first eleven months of the fiscal year 1913-14 the total revenues were $1,204,853,552; expenses $914,579,983; net revenue $290,-273,569; net decrease over 1912-13, $68,-525,074. But this was not an uncommon fluctuation and was due to a decrease of 3 per cent in gross revenue. This in turn was due to business depression, as shown by the fact that there was a monthly average of 88,685 idle cars in official classification territory in 1914 as compared with 9,670 in 1913. **The Campaign of Publicity.**—The carriers made a concerted effort through propaganda to force the Commission to approve the proposed rates. Letters and telegrams, newspaper and magazine editorials, endless chains and cartoons were resorted to. **Dissenting Opinions.**—McChord, Comm'r, disapproved of granting an increase in central freight association territory while denying it to trunk line territory, on the ground that the majority, while acknowledging that the net operating income throughout official classification territory was smaller than demanded in the interest both of shipping public and railroads, had cast the burden upon a part only of that territory. The central freight association scale from 7.5c first class for 30 miles to 45c for 475 miles was a minimum, not a maximum scale, exceeded at many points. Higher ton-mile earnings in trunk line than in central freight association territory were ascribed (1) to the existence of many commodity rates on heavy articles and (2) the fact that a great part of the traffic in central freight association territory neither originated nor ended in that territory, and hence carriers in that territory got no part of the terminal charges. But while deprived of terminal charges they were relieved of terminal expense. No reliable conclusions could be deduced from the majority's method of comparing a selected list of prosperous carriers in trunk-line territory with a selected list of unfortunate carriers in central freight territory. Physical conditions of operation are more favorable in the latter than the former. An increase of rates in the one territory, those in the other remaining unchanged, would disturb the rate adjustment between the great commercial centers in the two, giving New York an advantage over Pittsburgh on shipments to Chicago. This would be placing the entire burden arising from through and local freight on local business. Daniels Comm'r, concurred with respect to the increase in central freight association territory, but maintained it should have been extended to most of the carriers in trunk-line territory. Throughout the country maintenance expenses had constantly risen while rates had remaind stationary or declined. Hence declining profits and consequent reluctance to invest in securities. Inquiry by the Commission into the manner in which carriers conducted their business should not have been combined with the hearing and determination of a proposed rate advance; and the propriety of tendering suggestions to the carriers as to methods of increasing revenues was questioned. The test of sufficiency of revenue should have been based on a study of operating ratios and their steady increase, or upon recent investments and their effect on net operating income, rather than on the ratio of net operating income to property investment. The Five Per Cent Case, 31 I. C. C. 351.

(m) Where the population of a territory has greatly increased, traffic grown in density, many improvements been made in railway facilities, many economies in transportation effected, and a general expansion and improvement in transportation conditions taken place, it is more logical to expect a reduction in rates than an advance. The Five Per Cent Case, 31 I. C. C. 351, 354.

(n) Upon re-argument of California-Nevada Lumber Rates, 28 I. C. C. 313, respondent contended that the Commission had erred in assuming that the proposed rates on shipments of lumber in carloads from New Castle, New England Mills, Colfax, and Gold Run, Cal., to Verdi and Reno, Nev., were class rates aggregating $5.40 per ton; whereas an in-

termediate clause in the tariff named Sacramento rates of $3.10 and $3.25 as maxima. Also that the Commission had erred in refusing to find that the existing commodity rates were in reality milling-in-transit rates. The tariff proposing advanced rates stated specifically "class rates apply," while the intermediate clause was by its terms confined to cases where no specific rates were named. The existing rates were published as open rates, with no conditions attached to their use. HELD, the existing rates should not be disturbed, as the fact that tonnage has decreased presents no excuse for an advance in rates. California-Nevada Lumber Rates, 31 I. C. C. 464.

(o) It is as much an increase of rate to give less service for the same amount as to charge a greater amount for the same service. Merchants' & Mfrs.' Asso. v. B. &. O. R. R. Co. 30 I. C. C. 388, 389; Chamber of Commerce of Washington v. B. & O. R. R. Co. 30 I. C. C. 446; Judd & Detweiler, Inc. v. B. & O. R. R. Co. 30 I. C. C. 455, 456.

(p) The Eastern Advanced Rate Case was originally submitted in May 1914 and decided July 29, 1914, 31 I. C. C. 351. Upon petition of the carriers the Commission ordered that a further hear ing be had, to be limited to the presentation of facts disclosed and occurrence originating subsequently to the date upon which the records previously made were closed. In the former decision the Commission did not grant the carriers proposal of a general increase as indicated in the tariffs filed but suggeste various methods whereby they migh conserve their revenues. In C. F. A territory, however, by reason of the lo level of rates prevailing and also by reason of financial necessities of the carriers, intraterritorial increases of approximately 5 per cent were permitted except on certain articles, mainly low grade commodities. The facts disclose and occurrences originating subsequen to May 29, 1914, may be summarized under three heads: (1) completed retur for the fiscal year ending June 30, 191 and returns for succeeding months; (2) the war in Europe; and (3) results o the original order. When the cases were originally submitted, the revenue and expenditure account for June, 1914 and the property investment account for that fiscal year were not available; the war was unforeseen; and the results of the order of the Commission were yet to come. Collectively, they present a new situation. The carriers submitted returns from the fiscal year, completed by the addition of the revenue and expenditure account for the month of June and the capital investment account for the year, also revenue and expenditure accounts for the months of July and August of the current year. Reports to the Commission for September have also made possible a similar statement for that month. These figures serve to emphasize the previous finding of the need of the carriers in Official Class'n territory, taken as a whole, for increased revenue. For the fiscal year just ended the net operating revenues as shown by the carriers are lower than was estimated or anticipated when the original report was issued. Not since 1908 have the net operating revenues of the carriers been as low as in the fiscal year ending June 1, 1914. In 1908 moreover the property investment account of the carriers was $1,309,000,000 less than in the last fiscal year. The surplus for 1908, after deducting $102,000,000 paid in dividends, was $47,000,000, whereas for the last fiscal year the dividends paid, amounting to $118,000,000, drew on the accrued surplus to the extent of $8,200,000. Of this amount the New England roads contributed over $4,000,000. From whatever comparative standpoint viewed, the net operating revenues of the last fiscal year must be regarded as unduly low. Operating costs and operating revenues fail to show the tendency to such concomitant variation as should prevail in the transportation industry. While the gross revenues declined only about 3.4 per cent, the net revenue shrank approximately 17.7 per cent. The indication is that some important items of cost have become relatively inelastic, and that a fall in gross revenue leaves an increasingly narrow margin of net revenue. As to the decline in the rate of return the situation is different. The property investment accounts as now standing on the books of the carriers cannot be accepted as accurately representing the fair value of the property devoted to serving the public. Objection was made to the increasing amounts charged in recent years to additions and betterments, particularly since the carriers failed to indicate separately the relative effect upon their accounts of outlay for additions and betterments, as compared with allowances for depreciation. But the fact remains that even if the increase in depreciation

and betterment accounts in the last year over the average for the last five years were added to the net operating income for the fiscal year, the results of operation would still fall below a fair return upon the amounts carried on the books as investment in property. While recently there has been an enlarged expenditure for maintenance of equipment, it is clear that it has not been enough to restrict to proper limits the number of cars and locomotives needing repairs. The same may be said as to the enlargment of expenditure upon roadway. The Commission cannot view with favor any attempt to obtain an increase in net revenue through unduly restricted expenditures upon maintenance. It cannot be said on the record that increased provision for depreciation or expenditure for maintenance as at present returned by the carriers is excessive, viewed either from the standpoint of proper bookkeeping or of safety of operation. It was urged that the war in Europe has created a condition which renders the diminution of the carriers' net income a menace to the prosperity of the country. The war has placed an added strain upon the carriers' credit; rates of interest will rise; a large volume of railroad securities is held abroad; a denial of the increase in freight rates, in view of the diminished net income, would be followed by the dumping of foreign securities upon the American market; domestic markets would not be able to absorb these securities, at least without great fall in price; disaster would result not only to the railroads but to other interests as well. For these and other reasons it is urged that the proposed increase should now be allowed. The conflict in Europe will doubtless create an unusual demand upon the world's loan fund of free capital and may be expected to check the flow of foreign investment funds to American railroads. The railroads represent the bulk of European investment in this country. The rate of interest has risen and may rise further. It is computed that in 1915, 1916 and 1917 the carriers in Official Classification territory must arrange for the payment or refunding of securities aggregating over $500,000,000. It is true that the predictions of the carriers in the 1910 case that their credit would vanish, without the increases then sought, have proven strangely at variance with their actual experience in the borrowing of many hundreds of millions. But it is not doubted that the financial problems of the carriers have been made more acute by reason of the war; and if rates are to be established that will afford reasonable remuneration to the carriers, consideration must be given to the increased hire of capital as well as to other increased costs. The methods suggested in the previous report for increasing the net revenue could not be put into immediate operation or produce immediate results. While differences may exist as to the relative importance to be attached to the various considerations presented, the Commission agrees in the conclusion that, by virtue of conditions obtaining at present, it is necessary that the carriers' revenues be supplemented by increases throughout Official Classification territory. Whatever the consequences of the war may prove to be, the fact must be recognized that it exists, that it is a calamity without precedent, and that by it the commerce of the world has been disarranged and thrown into confusion. The means of transportation are fundamental and indispensable agencies in our industrial life and for the common weal should be kept abreast of public requirements. The present report acquiesces in a territorial extension of the relief granted to the C. F. A. lines by permitting the carriers to file tariffs, with certain exceptions specified herein, for horizontal rate increases in Official Classification territory. It is expected that the constructive work suggested in the original report for the purpose of conserving and augmenting the net revenues of the carriers will be carried forward without interruption. Carriers will be required to keep an account of the additions to their revenues from increases in rates subsequent to July 29, 1914, and from new charges, and to report separately thereon to the Commission at the end of 12 and 24 months, respectively. For various reasons the following rates are excepted from the proposed increase: (1) Rail-lake-and-rail, lake-and-rail and rail-and-lake rates. It is shown that since the rail carriers acquired ownership of the lake lines increases have been made which lessen the differences between them and the all-rail rates. (2) Rates on bituminous coal and coke. These rates were investigated not long since and maximum rates fixed by the Commission. The prevailing rates are remunerative and the financial condition of the principal bituminous coal carriers is in marked con-

trast with that of many of the other carriers. Twice in the not distant past rates on bituminous coal have been increased 5c per ton and would seem now to be as high as may be fairly allowed. It must be remembered also that the carriers are not seeking increases in rates on anthracite coal, and both kinds are used in competitive markets. As to coke, the rates controlling the greater volume of the traffic have recently been set by the Commission upon a basis which was specifically designed to guard against shrinking the carriers' revenues, and which has really resulted in substantial additions to their revenues on that traffic. (3) Rates on anthracite coal and iron ore, because largely they are before the Commission for review in other proceedings. (4) Rates held by unexpired orders of the Commission. In the former decision the Commission declined to allow increased rates on cement, starch, brick, tile, clay and plaster. In the light of the existing situation these rates may be increased throughout the Official Classification territory under the limitations herein set forth. Joint rates between Official Classification territory on the one hand and southeastern territory, the southwest and points on or east of the Missouri River on the other may be increased not to exceed 5 per cent of the division accruing to the carriers in Official Classification territory. If these increases involve a change in the relationship under the long and short haul rule between intermediate points and more distant points outside of Official Classification territory, relief from the Fourth Section must be secured first on regular application. Interstate rates to and from New England from and to points in Trunk Line or C. F. A. territory, where necessary to preserve established relationships between points or ports in New England and points or ports in Trunk Line territory, may be increased not to exceed five per cent. Subject to the maintenance of the established Atlantic port differentials, rates to and from New York may be increased not to exceed 5 per cent, and rates to and from Portland, Boston, Philadelphia and Baltimore may be increased to the extent necessary to maintain the established differentials. Except as otherwise noted, rates in Official Classification territory may be increased not to exceed 5 per cent; but rates increased since July 29, 1914 may not now be again increased so as to exceed those then in effect by an aggregate of more than 5 per cent of the intraterritorial rate or of the division of the interterritorial rate accruing to the road or roads in Official Classification territory. In some instances and in part because of the pendency of this proceeding, certain proposed increased rates have been suspended. Carriers may, if they so elect, cancel such tariffs so suspended and file in lieu thereof tariffs which conform to the limitations herein specified. If that is done, such suspension will be vacated. If fractions in excess of one-half a mill are rounded upward, fractions less than one-half a mill are to be discarded. The Five Per Cent Case, 32 I. C. C. 325, Harlan, Chairman, and Clements, Commissioner, dissenting.

(q) In times of financial strain and stress other industries must, by introspection and self-examination, see how their methods may be improved. The original report requires a similar course on the part of the carriers; and what is needed is the most persistent affirmative course of action on the part of the Commission not only in requiring but in aiding the carriers to eliminate such abuses from their rate structures and practices. The supplemental report, in seemingly relieving the carriers' distress, removes the spur of obvious necessity which would have been the most potent factor in eliminating the abuses which the record shows are the real cause of the existing inadequacy of revenue. The inevitable result of the Commission's action will be to remove the pressure which otherwise would exist upon the state authorities to apply the right remedies. The supplemental report unlawfully shifts the burden of the carriers' troubles upon the interstate shipper. This should frankly be recognized as one of the results that will follow the action now approved by the majority of the Commission. An endeavor to stimulate commerce and to bolster up the credit of the carriers, as contended at the further hearing, by an increase in rates will simply result in a perpetuation or recurrence of the financial distress of the carriers. I can not but think that a general increase in the standard rates of this country, while the rate structures of these carriers remain full of inconsistencies, discriminations, and wrongful practices that deplete their revenues, is morally wrong; that the placing of additional burdens on interstate commerce that is

not also placed upon state commerce is also wrong; and that the course approved in the supplemental report will ultimately be as disastrous to the carriers themselves as it will be harmful to the general interests. The Five Per Cent Case, (Diss. Op.) 32 I. C. C. 325, 335.

(r) The only rational and reasonable course for carriers to pursue to augment their revenues by a general increase in rates, is to obtain the common consent of the shipping public and state officials thereto. The Five Per Cent Case, (Diss. Op.) 32 I. C. C. 325, 333.

(s) There is and has been no adequate control of the issuance of stocks and bonds, and they have been put out largely by those holding the theory that there exists no relationship between the securities of a carrier and the reasonableness of its rates. Now, we see these securities calling for increased rates to make them good. If now, to strengthen and maintain the credit of the carriers, regardless of the causes of its exhaustion or impairment, and without the application of the usual tests of reasonableness, these increases are justified, then, it seems to me that we are only at the beginning of what I fear will be a train of demoralizing results, disappointing and embarrassing to all concerned. It is by no means certain that it would not, in the long run, be cheaper to the public to guarantee the bonds of the weak roads unable to meet their obligations, rather than try to take care of them by increased rates, which inure to the strong roads as well as the weak. The Five Per Cent Case, (Diss. Op.) 32 I. C. C. 325, 340.

(t) Up to the beginning of these efforts for increased rates there had for many years been a steady and constantly increasing percentage of carriers paying dividends, as well as in the rate of dividends paid. It appears evident that carriers are suffering more just now for want of freight to carry than for want of higher rates. It is just as safe to prophesy that this is a temporary condition as to prophesy concerning future rates of interest and the dumping of foreign-held American railway securities on our investment markets. It would not seem to be out of line with ordinary prudence and conservatism, prevailing in other lines of industry, if the carriers had undertaken to meet this apparently temporary situation as have others. Such a course, it seems to me, would have contributed to their credit, rather than the course they have pursued. The Five Per Cent Case (Diss. Op.), 32 I. C. C. 325, 340.

(u) When an important and long-standing rate relation is sought to be changed, the justification must be clear and convincing. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594.

(v) The Commission considered proposed increases in the rates on cement in carloads from Salt Lake City, Bakers, and Devils Slide, Utah, to Butte and Anaconda, Mont., and other points in Montana and Idaho. The existing rate from Devils Slide to Butte and Anaconda, distant 428 and 454 miles, respectively, was 25c; proposed rate 27c. On shipments to Anaconda the per ton-mile revenue would be increased from 11 to 13.2 mills. Rates from competing cement mills at Trident, Mont., and Metaline Falls, Wash., 66 and 485 miles from Butte, respectively, were 7 1-2c and 25c. HELD, that the proposed increases had not been justified. Suspended tariff cancelled. Cement rates from Salt Lake City, 33 I. C. C. 5.

(w) The Cummins Amendment does not automatically bring into effect the increased rates named in the classifications and tariff publications as applicable to shipments which are not made subject to the terms of the uniform or carrier's bill of lading. The Cummins Amendment, 33 I. C. C., 682, 693.

(x) Reasonableness of proposed increases cannot be established by pointing to fourth section violations that are thereby obviated. Rates Between Shreveport and Texarkana, 32 I. C. C., 180, 182.

(y) It not infrequently occurs that increases in rates which have been maintained for many years are found amply justified. Freight Rates From Minnesota Points, 32 I. C. C. 361, 365.

(z) Burden upon defendants to show that increased rate resulting from cancellation of carload rating on porch blinds was just and reasonable. Reparation awarded. Gregg & Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A-768.

§3. Burden of Proof.

See Evidence, I, §43 (h).

(a) Under the statute the burden is on the carrier to justify a proposed in-

crease in rates. Rates on Crushed Stone, 30 I. C. C. 22, 23.

(b) Where rates on road stone are open to the general public without restriction, carriers are not relieved from the burden of proof imposed by section 15 on proposals to increase rates, though the existing rates may have been established in the interest of public road-making. Rates on Crushed Stone, 30 I. C. C. 22, 24.

(c) Section 15 of the Act, places the burden on the carrier to justify any increase in a rate made since Jan. 1, 1910. Rates on Crushed Stone from McCook and Thornton, Ill., 29 I. C. C. 136, 137; Duluth Log Rates, 29 I. C. C. 420, 421; Rates on Potash and Other Commodities, 29 I. C. C. 626, 628.

(d) To justify an advance in rates to a basis formerly in effect, something more must be shown than that under the former basis interested shippers were able to compete. Rates on Potash and Other Commodities, 29 I. C. C. 626, 628.

(e) Burden of justifying increased rate resulting from correction of inadvertent omission of qualifying phrase in tariff fully met when circumstances are explained. Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 46.

(f) While the law casts upon the respondents the burden of showing that the increased rates are reasonable, parties at whose instance suspensions are ordered should present to the Commission all facts which, in their opinion, tend to show that the increases should not be allowed. Commodity Rates Between Missouri River Points, 28 I. C. C. 265, 267.

(g) To the extent of the reasonable cost of store-door delivery as formerly maintained, the burden is on the carrier to justify its withdrawal and the consequent increase of cost to shippers. Chamber of Com., Washington, D. C., v. B. & O. R. R. Co., 30 I. C. C. 446, 448.

(h) The law casts upon the carriers the obligation to justify proposed increased rates. Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 22.

(i) The burden of proof cast upon the carriers to justify rates advanced or proposed to be advanced over rates in effect before 1910 is no different in kind from the burden cast upon the shipper who assails a rate in effect before 1910. The Five Per Cent Rate Case, 31 I. C. C. 351, 449. (Dissenting Opinion.)

(j) The burden is on the carriers to justify proposed higher rates. The Five Per Cent Rate Case, 31 I. C. C. 351, 355.

(k) The statute imposes upon carriers where rates have been increased after Jan. 1, 1910, the burden of proof to show that the increased rates are just and reasonable. The purpose of this provision was to meet increases over those rates that had prior to 1910 been normally established. Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 535.

(l) Failure to make any contention as to the burden of proof and the assumption of that burden by complainants, may be regarded as an admission that the statute was not made to apply where an increase was made over a rate reduced, because of conditions not resulting from any action of the carriers, and where the increased rate merely restored a former rate that had long been maintained. Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 536.

(m) Even though a tariff does not actually carry an advance in rates, but is instead the cancellation of an illegal tariff privilege, the burden of proving the reasonableness of the increased rate is upon the carriers. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 582.

(n) Burden of proof on carrier to justify where free store-door delivery eliminated from tariffs. Merchants' & Mfrs.' Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 389.

(o) The burden is upon the complainant to show a rate increased prior to Jan. 1, 1910, to be unreasonable. Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 611.

(p) Burden of proof on carrier to justify advance where joint through rates cancelled to correct error. Cement rates from Mason City, 30 I. C. C. 426, 428.

(q) Withdrawal of store-door privilege without change in rates. Advance on carriers to justify. Chamber of Commerce of Washington, D. C. v. B. & O. R. R., 30 I. C. C. 446, 447.

(r) The statute casts upon the carrier the burden of justifying any increased rates. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508.

(s) Where increases in rates were made prior to January 1, 1910, the burden of proof is upon complainants. Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 611.

(t) The fact that a rate was published in error does not relieve the carrier of the burden of proof cast upon it by the statute when such rate is increased. The Commission may, however, in passing upon the reasonableness of the increased rate, take into consideration the circumstances under which the lower rate was established. Chamber of Commerce, Houston, Texas, v. I. & G. N. Ry. Co., 32 I. C. C. 247, 256.

(u) It is clearly incumbent upon a carrier to give convincing reasons why it should increase materially rates of such long standing that experienced traffic men are unable to satisfactorily explain their origin. Chamber of Commerce, Houston, Texas, v. I. & G. N. Ry. Co., 32 I. C. C. 247, 257.

(v) The original record contained evidence that the general basis in Central Freight Association territory was unduly low and that the proposed increased rates would be just and reasonable. We therefore allowed the higher rates, with certain exceptions, to go into effect. The original record contained no evidence tending to prove that any of the proposed increased rates affecting trunk line or New England territories were just and reasonable, and this deficiency in proof was not supplied upon the further hearing. For example, the 75-cent rate on first class traffic moving between New York and Chicago is the rate yardstick of this country, the standard by which, after making due allowances for differences in conditions, density, etc., all other rates may ultimately be measured. That scale of rates has been in effect for more than a generation. Nevertheless, no effort was made on the part of any of the lines in Official Classification territory to show by what may be denominated rate testimony that this scale of through rates is unduly low or that higher through rates would be just and reasonable. Since the act of Congress imposes the burden of proof upon the carriers to establish that proposed increased rates were just and reasonable, we were compelled to withhold on the original hearing and are, in my opinion, now bound to withhold approval of any of these rate increases affecting trunk line and New England territories. Moreover, the record shows the financial condition of the trunk line carriers generally to be much more favorable. The Five Per Cent Case (Diss. Op.), 32 I. C. C., 325, 333.

(w) The burden is on the carriers to sustain the contention that proposed rates are just and reasonable. Freight Rates from Minnesota Points, 32 I. C. C. 361, 363.

(x) The burden is on the respondents to show that proposed increased rates are just and reasonable. Cement Rates from Points in Illinois, 32 I. C. C., 369, 371.

(y) The respondents have the burden of showing that a proposed increased rate is just and reasonable. Cement Rates from Points in Illinois, 32 I. C. C., 369, 374; Northbound Rates on Hardwood, 32 I. C. C., 521, 524.

(z) The burden is on the respondents to show that a proposed increased minimum is just and reasonable. Rules Governing Shipments of Freight in Peddler Cars, 32 I. C. C. 428, 433.

(aa) When the Commission enters upon an investigation of proposed increased rates, the propriety as well as the reasonableness of those rates is in issue. Transcontinental Commodity Rates, 32 I. C. C., 449, 451.

(bb) In a proceeding to consider proposed increased rates the question to be determined under the statute is, have respondents shown that the proposed increased rates are just and reasonable? Class and Commodity Rates to and from Quincy, Ill., 32 I. C. C., 471, 477.

(cc) Act requires carriers to show affirmatively the reasonableness of increased rates. The Five Per Cent Case, 31 I. C. C., 351, 425.

(dd) Assumption of burden of proof by complainants regarded as an admission that statute does not apply in a case where increase was made over a rate reduced because of conditions not resulting from any action of carriers and where the increased rate merely restored a former rate that had long been maintained. Corporation Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C., 532, 536.

(ee) Extensive advances in rates cannot be sustained, where as to many of the proposed rates the evidence is meager while as to others it is entirely

wanting. Lumber Rates from Helena, Ark., and other Points, 33 I. C. C. 297, 301.

(ff) The statute places on the respondents the burden of proof to show that proposed increased rates are just and reasonable. Bituminous Coal Rates to Baltimore and Other Cities, 33 I. C. C., 307, 317.

(gg) It is clearly incumbent upon carriers to give convincing reasons why they should increase materially rates of such long standing that experienced traffic men are unable to satisfactorily explain their origin. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co. 32 I. C. C., 247, 257.

(hh) Under section 15 of the Act, the burden of showing that an increased rate or proposed increased rate is just and reasonable rests upon the carriers. Lumber Transit Privileges at Buffalo, N. Y., 33 I. C. C., 601 604.

(ii) The statute casts upon respondents the burden of proof to show that proposed increased rates are just and reasonable. Northbound Rates on Hardwood, 32 I. C. C. 521, 524.

(jj) Burden of proof upon defendants to show that increased rate resulting from cancellation of carload rating was just and reasonable. Gregg & Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. A-768.

(kk) The burden of proof of the reasonableness of rates increased after January 1, 1910, is upon the carriers, both as to the total or through charges and the separately established or separately stated charges which make up the total. And it is as much an increase of rate to give less service for the same amount as to charge a greater amount for the same service. Rates on Hay to Chicago, 34 I. C. C., 150, 152.

(ll) For each rate, a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point, the delivery at that point is in no sense a "free service." The carrier may increase the rate or it may curtail the service performed for that rate, but if such action is challenged it must bear the burden of showing that the new rate of service is reasonable and free from unjust discrimination. Rates in Chicago Switching District, 34 I. C. C. 234, 242.

(mm) It is the carrier's duty under the statute to establish the reasonableness of the increased rate rather than the reasonableness of the increase. Rates on Lumber from Southern Points, 34 I. C. C. 652, 680.

§4. Effect.

(a) The Commission considered proposed increases in the rates on yellow pine, cypress, and hardwood lumber in carloads from points of origin in Arkansas, Texas, Mississippi and Louisiana to the Omaha group and other destinations in Missouri, Iowa, Kansas, Nebraska, and South Dakota. Existing rates on hardwood from Helena, and West Helena, Ark., and from points in Mississippi and Louisana east of the Mississippi River, were 21 1-2c, 21 1-2c, and 25c; proposed rates 22c, 22c, and 26 1-2c. The corresponding existing rates on yellow pine and cypress were 21 1-2c, 21 1-2c, and 25c; proposed rates 23 1-2c, 23 1-2c, and 26 1-2c. On shipments from the southern yellow pine territory the existing Omaha group rates were only 1c over that to Kansas City for a 200 mile extra haul, as compared with 3c, St. Louis, Mo., over Cairo, Ill., on an extra haul of 152 miles. The ton-mile revenue of 5.14 mills on the existing rate would only rise to 5.45 mills on the proposed rate. HELD, that the proposed increased rates had not been justified. Tariffs under suspension cancelled. Lumber Rates from Helena, Ark., and other Points, 33 I. C. C., 297.

(b) In a case where the burden of proving an increased rate reasonable rests with the carrier, the fact that the complainant proceeds first with his proof does not operate to shift the burden of proof. Mixed Car Dealers' Ass'n, v. D. L. & W. R. R. Co. et al, 33 I. C. C. 133, 136.

§5. Right to Advance.

(½) In General.

(a) The Commission considered proposed increases in the rates on wheat and corn, from 15¾c and 14¾c, yielding a ton-mile revenue of 4 mills and 3.7 mills, to 20¾c and 19¾c, yielding a ton-mile revenue of 5.1 mills and 5 mills, from Omaha, Council Bluffs, and lower Mis-

souri River cities to Mann, Spencer, Unity, Colby and Abbotsford, local Wisconsin points on the M. St. P. & S. Ste. M. Ry., distant from Omaha approximately 800 miles. Mann and Spencer are on the main line of the M. St. P. & S. Ste. M. Ry. running between Chicago and the Twin Cities, while the other points have been put off the main line by a cut-off constructed from Spencer to a point beyond Abbotsford. Abbotsford, the farthest distant, is 305 miles from Chicago. From Marshfield, 3 miles southeast of Mann, a branch line runs to Greenwood, 22 miles. The existing joint rate of the C. R. I. & P. R. R. from named points of origin via Chicago through Abbotsford is 15¾c on wheat and 14¾c on corn. On the Greenwood branch the rate is 5c higher. Under the proposed tariff, however, the rate breaks at Marshfield and the points named take the Greenwood rate. The C. B. & Q. R. R., in connection with the G. B. & W. R. R., traversing the territory south and east of Abbotsford, carries rates of 15¾c and 14¾c, and the same rates are published by the C. & N. W. R. R. to Antigo, the mileage of which is somewhat less than that to Marshfield via the M. St. P. & S. Ste. M. Ry. On the other hand, the proposed rates are published by the A. T. &S. F. R. R., the C. & A. R. R., and the M. St. P. & S. Ste. M. Ry., and 1c less by the Wabash, observing either Marshfield or Mann as the breaking point; while the C. St. P. M. & O. R. R., running west of Marshfield, applies to stations beyond a higher rate than to Marshfield. The proportional rates on wheat and coarse grain from Omaha to Minneapolis are 11c and 10c; from Minneapolis to Chicago 10c and 7½c; or totals of 21c on wheat and 17½c on corn. Little, if any, traffic had ever moved between the points in question under the existing rates. The ton-mile revenue accruing under the proposed rates would be substantially that afforded by the single-line haul between the Missouri River and Chicago. HELD, that there would be no resultant damage should the increased rates be put in force. The proposed rates are reasonable and should be allowed to become effective. Order of suspension vacated. Omaha-Wisconsin Grain Rates, 28 I. C. C. 602.

§5. (1) To Avoid Reducing Other Rates.

(a) The fact that other rates may be reduced if the increases are not permitted to become effective affords no predicate that the present rates are unreasonably low. Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292, 297.

(b) The Commission considered proposed increases by the M. K. & T. R. R. from 45c per ton on slack coal and 55c on run-of-mine coal, to 77c on both, on shipments from Fleming and West Mineral, Kan., to Dewey and Bartlesville, Okla., for distances of 80 and 84 miles, respectively. Complainants with plants at the latter points had until recently, together with their competitors at Humboldt, Chanute, Iola and Mildred, in the Kansas "gas belt," 57, 47, 83 and 94 miles, respectively, from Fleming and West Mineral, used natural gas and oil for fuel. Being driven by the exhaustion of the gas supply and the advancing price of fuel oil to resort to coal, their Kansas competitors petitioned the Kansas commission to lower the rates of $1 on slack and $1.25 on run of mine, then largely paper rates, from Fleming and West Mineral. The Kansas commission accordingly established 45c and 55c rates on slack and run-of-mine, which were by respondent extended to Dewey. Thereupon, owners of cement mills at Ada, in southern Oklahoma, petitioned the Oklahoma commission to establish rates to Ada from mines in Oklahoma not higher for similar distances than the interstate rates respondent had established to Dewey; and to avoid the possibility of its intrastate rates being reduced by the Oklahoma commission, respondent filed the tariff under suspension. Complainant cement company at Dewey consumes 225 tons of coal per day, and the increase would cost it $23,000 per year. All coal originating at Fleming and West Mineral, consigned to Kansas points, and to Dewey and Bartlesville, moves the entire distance via respondent's line. HELD, that the proposed increases are not justified. Ordered that they be canceled and existing rates maintained. Coal Rates to Dewey, Okla., 30 I. C. C. 115.

(c) It is open to the Commission to consider as a part of the test of the propriety of a new rate, the circumstance that it will eliminate a discrimination existing under the adjustment which it is to supersede. This is not to say that the consideration as to whether the new rate effects or eliminates a discrimination can

be urged in sole justification of the rate. A new increased rate might eliminate discrimination, and yet be condemned for being unreasonably high. The fact, however, that it does eliminate discrimination, should be given some weight in determining its propriety. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 420.

(d) Fact that refusal of Commission to approve proposed increase may make it necessary for respondents to reduce rate from intermediate points in order to remove violations of fourth section, does not justify proposed increase. Lumber Rates to Knoxville, Tenn., 30 I. C. C. 524, 526.

(e) That carriers may have to reduce intermediate rates if they do not increase terminal rates cannot justify such increase. Cement Rates from Points in Illinois, 32 I. C. C. 369, 372.

§5. (1½) Decline in Tonnage.

(a) That tonnage has declined, is not always a sufficient reason for an increase in rates. California-Nevada Lumber Rates, 31 I. C. C. 464, 465.

§5. (2) To Equalize Rates.

See Equalization of Rates, Relative Rates.

(a) The Commission considered proposed increased rates on lumber from points in Arkansas, Louisiana, Missouri, Oklahoma, Tennessee and Texas, to points in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, South Dakota and Wisconsin. Reissuance of respondent's tariffs from points of origin through the Kansas City, St. Louis, Thebes and East St. Louis gateways, having become necessary, they had, in the interests of economical publication, convenience of reference and uniformity of rates, decided upon one single tariff, which involved as well a revision of rates, and territorial groupings. The elimination of all joint rates which exceeded the sum of intermediates, narrowed the issue to the proposed increased rates from points on the K. C. S. and St. L. & S. F. R. Rs. On the principal kinds, yellow pine and hard wood, points of production were divided into five groups, as follows: Group one, Neosho, Mo., to Page, Okla.; group two, Fogels Spur, Okla., to Vandervoort, Ark.; group three, Hatton, Ark., to DeQueen, Ark.; group four, P. O. & G. Co. Spur, Ark., to Wilton, Ark.; all south of the last point being in group five. The tariff established specific rates from groups one to five. Rates from groups two, three and four were made by adding differentials to group one rates as follows: group two, 1c; group three, 3c; group four, 5c. Very little yellow pine was shipped from groups one to four. While no change was made as to group five, an increase was proposed on shipments from groups one to four of approximately 1c per 100 lbs.; existing rates having resulted from severe competitive conditions. These conditions having ceased, the rates of other carriers from the district had been increased, while the K. C. S. Ry. had not been able to increase its rates in equal ratio. Neosho and Page were, respectively, 174 and 339 miles from Kansas City and 395 and 560 miles from Des Moines. The existing rate from group one points to Des Moines was 18½c; the proposed rate, 19½c. Randalls, on the Cotton Belt, is 147 miles from St. Louis and 490 miles from Des Moines, and the rate 19½c. Brinkley, Ark., is 335 miles from St. Louis and 678 miles from Des Moines, and the rate 22½c. Allenville, on the Iron Mountain R. R., is 145 miles from St. Louis and 485 miles from Des Moines, and the rate is 19c; Nettleton, Ark., 274 miles from St. Louis and 614 miles from Des Moines, and the rate 22½c. The purpose of the purposed increased rates was to effect an alignment of rates as between producing points on respondent's line and on competitive lines. It was proposed to break up the existing grouping so far as it applied to hardwood, the proposed regrouping on hardwood lumber being: Group 1, Neosho, to Noel, Mo.; group 2, Wye, Ark., to Westville, Okla.; group 3, Barren Fork, Okla., to Morris Ferry, Ark.; group 4, Winthrop, Ark., to Ashdown, Ark.; south of the latter point being group 5. The effect of this regrouping would be to throw the bulk of the hardwood tonnage in groups one to four into group three, thus increasing the rates on hardwood lumber. Unlike pine, hardwood was not milled in the timber and respondent was compelled to render considerable extra service in hauling logs to central mill points at rates where were not remunerative. In 1913, forest products constituted 33 per cent of the aggregated tonnage of the K. C. S. R. R., a material increase over its 1912 tonnage, and its per-ton-mile revenue increased from 5.7

mills to 6.2 mills, but notwithstanding the increase, respondent's per-ton-mile earnings were still below the general average of other carriers in that section of the country, and even below the average for the United States. With respect to proposed changes in rates from points on the St. L. & S. F. R. R. it appeared that changes were proposed from Moyers and Bokloma, Okla., and from stations Hope to Ashdown, Ark., to 433 destinations, increases varying from ½c to 6c, a fair average being 1½c. The proposed rates of the St. L. I. M. & S., the C. R. I. & P., and the A. T. & S. F. R. Rs., as a rule affected reductions, increases being proposed only in a few cases. Protestant contended that owing to the scattered growth of timber in groups one to three, and the rough condition of the country, it cost from $13 to $14 to put pine lumber on the cars, as compared with $10 in group five. Protestant's concern, with the specific rates from group one, was secondary to the question of the differential to be maintained between groups one and five, protestants maintaining that the proposed increases would breach an implied understanding for the maintenance of a differential of 7c or 8c, upon which they and others invested their capital in the establishment of mills in Northern Arkansas and Eastern Oklahoma. During more than half the time for the last 15 years, the differential between the rates from group one and five had been 6½c or lower. HELD, that so far as concerned their bearing upon the reasonableness of rates, the high cost of production in the upper groups was in no sense controlling, it not being the province of the Commission to adjust rates for the purpose of equalizing natural or commercial advantages. Order of suspension vacated, except as to the rates to Sioux Falls, Iowa, which were declared too high as compared with the rates to Omaha and Council Bluffs. New joint through rates exceeding the sum of intermediate rates were declared unreasonable and respondents directed to correct them as speedily as possible. Lumber Rates from the Southwest to Points North, 29 I. C. C. 1.

(b) The Commission considered proposed increase in rates on pine logs shipped from certain points in Minnesota, Congo to North End, on the main line of the G. N. Ry., to Superior, Wisconsin, over an average distance of 50 miles. Upon application of the intervener lumber company, desirous of purchasing timber land at such points, the railway company established a rate of 2c per 100 lbs., minimum 60,000 lbs., capable of producing earnings of $12 per car, or, for a distance of 50 miles, 24c per car mile. The lumber company thereupon purchased the timber land, invested considerable sums in spur tracks, etc., and shipped large quantities of logs under the rate. But large quantities still remained at the time of the hearing. It was now proposed to charge the regular G. N. Ry. lumber rates from these points, running from 3½c for a 42-mile haul to 4½c for a 64-mile haul, from the most distant point. The existing rate yielded an average earning per car mile of over 24c, and a trainload revenue of approximately $5, as against an average earning per car mile on all defendant's business of 17.6c, and an average trainload revenue of $4.85. Terminal expenses were light. The mileage scale usually applied by defendant to the movement of logs in Minnesota was below the two-cent rate, and the rates by other lines for corresponding distances into Duluth and Superior usually less. HELD, that in view of the facts, no increase in rates would be considered were it not for the Commission's decision in Pulp & Paper Mfrs. Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 98, where a mileage scale was established for pulpwood, which, if applied to this case would run from 2.5c at North End, the nearest, to 2.9c at Congo, the most distant, point. Pulpwood is less valuable than logs and will load as heavily; hence logs should take a rate at least as high. Pulpwood rates ordered established on shipments of logs from the points involved. Duluth Log Rates, 29 I. C. C. 420.

(c) The Commission considered a proposed increase in the rate on flour in carloads from Kansas, Nebraska and Oklahoma to California terminals, from 65c to 75c per 100 lbs. The wheat-producing area of these states principally involved is the group east of a line drawn north and south through Emporia, Kan. The rates on wheat and flour to the terminals are blanketed over this group. Taking Hutchinson, Kan., as a typical producing point, the corresponding rate on wheat was 58c, which it was proposed to leave unchanged, thus widening the spread between wheat and flour from 7c to 17c. The spread between these commodities had been steadily reduced since

1900 from 25c to 7c, the latter having been prescribed as a maximum in Howard Mills Co. v. M. P. Ry. Co., 12 I. C. C. 258. Respondents contended, however, that the case was not controlling, as the matter of milling in transit was not made a factor in its determination. Under respondent's tariff wheat might be shipped from any producing point in question to an intermediate mill, ground into flour, and the flour shipped to California terminals at the rate on flour from point of origin; besides which a considerable portion of the inbound rate was refunded to the Kansas miller, who was also given a diversion privilege upon arrival of his shipment at the terminal, without extra charge. California millers were granted the same privilege, which, however, is of no practical benefit to them, as the milling-in-transit privilege is not applicable to the terminals, compelling them to pay the wheat rate, plus the outbound local 10c rate. It was also shown that the average loading of wheat was 68,969 lbs., and of flour, 52,888 lbs., with average carload revenues of $400.02 and $342.79, respectively. Although in California wheat was worth $36 per ton and flour $50 per ton, it took 273 lbs. of wheat to make 196 lbs. of flour, so that the Kansas miller shipping flour had a decided advantage over the California miller who must ship wheat, including the bran and shorts. HELD, that while the Kansas miller has an advantage over the California miller in getting the raw material from the growing point, through the mill, to the ultimate consuming point in the form of flour, nevertheless the advantage is natural, being due to better location of the Kansas miller with respect to the origin of wheat. Advance denied. Kansas-California Flour Rates, 29 I. C. C. 459.

(d) It should be noted that increased rates from north Atlantic ports may not be justified upon a mere showing that they are "in line" with rates from the Gulf ports. Rates on Potash and Other Commodities, 29 I. C. C. 626, 628.

(e) The Commission considered a proposed increase in the rate on wool, any quantity, from Lawrence, Mass., to Lewiston, Me., a distance of 125 miles, from 12½c to 15c per 100 lbs. While the existing rates from both Boston and Lawrence to Lewiston were 12½c per 100 lbs., the rate from Boston to Skowhegan was 17½c, while from Lawrence it was 20c. Respondent, conceding the discrimination, undertook to remove it by advancing the rate from Lawrence to Lewiston, while protestant sought to preserve the existing rate, that it might use it as a club to compel a reduction in the rate from Lawrence to Skowhegan. The existing class rates from Lawrence to Lewiston were 36c, 30c, 24c, 19c, 15c and 12c for the six classes. HELD, considering the cases of Wool Investigation, 23 I. C. C. 151, 169, and Traugott Schmidt & Sons v. M. C. Ry. Co., 23 I. C. C. 684, that the proposed rate of 15c was not unreasonable. Massachusetts-Maine Wool Rates, 28 I. C. C. 396.

(f) Cancellation of commodity rate, leaving higher class rate in effect on oleo stock from Los Angeles, Cal., to Chicago, Ill., following action in so-called Inter-Mountain cases and for the purpose of eliminating violations of section 4, not found to have been justified. Sulzberger & Sons Co. v. S. P. Co., Unrep. Op. A400.

(g) The Commission considered proposed increases of from 10c to 40c per ton in rates on coal from mines on the C. & E. I. R. R. in Southern Illinois and Indiana, to points on the Mason City and Clear Lake and Inter-Urban railways, electric lines with termini at Mason City and Des Moines, Ia., the traffic being routed via both Chicago and Peoria. In traffic to Iowa, rates from southern Indiana and Illinois mines were made by adding fixed differentials to rates from the northern Illinois group, the rate from which was the same as that from Chicago and Peoria; this adjustment obtained to practically all points in Iowa west of the main line of the M. & St. L. R. R., except the destinations in issue. It was also the adjustment in effect via other lines from mines in the same group with the C. & E. I. R. R. mines, and in some cases, from mines in the same group served by the C. & E. I. R. R. Respondents contended that their main purpose in making the increases was to remove the discrimination in favor of mines situated on the C. & E. I. R. R. existing under present rates. The distances under the proposed rates ranged from 497 to 715 miles and the rate per ton-mile from 3.2 mills to 4.40 mills. About 5,000 tons of coal a year were affected HELD, that the proposed rates were reasonable. Order of suspension vacated Coal Rates from Indiana and Illinois Mines, 30 I. C. C. 108.

(h) The Commission considered pro-

posed increases of from 1c to 1½c per 100 lbs. in local rates on iron and steel articles from Chicago, and in proportional rates from the Mississippi River on traffic originating east of the Indiana-Illinois state line, to stations in Iowa as far west as Fort Dodge and Des Moines; also on scrap iron to St. Paul, from 8½c to 10c from Sioux Falls, S. D., and from Sioux City, Iowa, and from 14½c to 15c from Omaha. Rates on iron and steel articles from Chicago to eastern Iowa were made with relation to rates from Chicago to St. Paul, which adjustment was influenced in turn by competition of lake lines from Cleveland to Duluth and Superior in connection with rail lines thence to St. Paul. In 1908, rates from Chicago to St. Paul were increased from 12½c to 14c, the present rate. Many stations in eastern Iowa are directly intermediate to St. Paul via certain routes from Chicago, and the influence on their rates has been extended through a large part of Iowa beyond the immediate influence of St. Paul. When St. Paul rates were increased to 14c there was no corresponding increase to the intermediate Iowa stations, and the rates to those stations are lower than to St. Paul. The proposed increase was to restore the former relationship of rates to the intermediate stations and make them and those influenced by the St. Paul adjustment not higher than to St. Paul. To points west of this intermediate territory the rates proposed were higher than the St. Paul rates. In that part of Iowa east of and including Cedar Rapids the maximum to Chicago is the Chicago-St. Paul rate. To a triangular strip west of Cedar Rapids, including Mason City, the maximum rate from Chicago is the St. Louis to St. Paul rate, which is made on a basis of 5 per cent over the Chicago to St. Paul rate. To another area further west, including Des Moines, the maximum Chicago rate is the St. Louis to St. Paul or St. Louis to Omaha rate, whichever is lower, plus 3c. To another area north of Des Moines and west of Mason City rates are made on the same basis as to the Des Moines group, except that the differential is 4c. To all Iowa points west of the groups described, the rates on iron and steel articles are 5th class, under the Western Classification. The proposed Chicago rates to Des Moines, Cedar Rapids, Marshalltown, Waterloo, Mason City, Fort Dodge, Ottumwa and Oskaloosa were, respectively, 17.5c, 14c, 14c, 14c, 14c, 18.5c, 14c, and 14c for distances of 358, 219, 289, 276, 355, 375, 280 and 306 miles. The new fifth-class rates, established under the decision in Cedar Rapids Commercial Club, v. C. R. I. & P. Ry., 28 I. C. C. 78, were 21c, 18c, 21c, 20c, 21c, 23c, 19c, 20c; rates appreciably higher to the same points. Fifth-class rates were also applied on iron and steel articles in Central Freight Association territory, and while conditions of transportation are more favorable in that territory than from Chicago to eastern Iowa, the adjustment to Iowa was not higher than for similar distances in Central Freight Assn. territory. For instance, rates from Chicago to Des Moines, Cedar Rapids and Fort Dodge were 17.5c, 14c and 18.5c, respectively, for distances of 358, 219 and 375 miles, as compared with rates from Pittsburgh to Chicago, St. Louis and Dayton of 18c, 22.5c and 14c, respectively, for distances of 468, 621 and 264 miles. The proposed rate of 10c on scrap iron from Sioux Falls to St. Paul involved a service of 237 miles and yielded 8.4 mills per ton-mile, as compared with rates of 10c from St. Paul to Chicago, 13½c from Watertown, S. D., and 10c from Ft. Dodge, Iowa, to St. Paul, for distances of 410, 224 and 210 miles, respectively. HELD, that respondents have justified the proposed rates. Advance allowed. Rates on Iron and Steel Articles, 30 I. C. C. 337.

(i) The Commission considered proposed increases in the rates on bananas in carloads from New Orleans, La., and Galveston, Tex., to Lincoln and Beatrice, Neb. The Commission having in Topeka Traffic Assn. v. A. & V. Ry. Co., 27 I. C. C. 428, denounced the rates of 70c and 80c from Galveston and New Orleans, respectively, to Topeka, Kans., as unduly discriminatory compared with rates to above-mentioned destinations, carriers proposed to establish a parity between the three destinations by increasing the Lincoln and Beatrice rates to the Topeka basis. A petition was also filed alleging that rates from Galveston and New Orleans to Wichita and Hutchinson, Kan., on the Topeka basis, were unreasonable and prejudicial. New Orleans is the axis on which banana rates from other Gulf ports turn, rates from Galveston being certain differentials over or under New Orleans rates, according to destination. The New Orleans rates were as follows:

New Orleans to—	Distance.	Commodity Rate.	Third-Class Rate.	Commodity Rate Is Per Cent of Third-Class Rate.
Kansas City, Mo...	879	63	65	96.9
Topeka, Kan.....	947	80	84	95.2
Hutchinson, Kan...	1,009	80	104	76.9
Wichita, Kan.....	961	80	104	76.9
Omaha, Neb.....	1,073	67	69	97
Lincoln, Neb.....	1,087	71	73	97.2
Beatrice, Neb.....	1,076	71	93	76.3

In passing upon the reasonableness of the proposed increases the Commission considered (1) the reasonableness of the New Orleans-Topeka rate, (2) the Lincoln and Beatrice situation, and (3) the Hutchinson and Wichita complaint. **Rates from New Orleans to Topeka.**—Topeka is 947 miles from New Orleans via the I. C. R. R. to Memphis, the St. L. & S. F. to Kansas City, and the C. R. I & P. to Topeka, banana traffic moving chiefly via this route. The U. P. R. R., the A. T. & S. F., and the M. P. R. Rs. also enter Topeka. In 1902 the St. L. & S. F. R. R. reduced the Topeka rate to 80c, following which Hutchinson was put on the same basis. Topeka jobbers can compete with those located at other points only in a zone extending 80 miles north, 34 miles south, and 97 miles west of Topeka. While to practically all points west of Topeka its jobbers have an advantage over Kansas City of 3c in the rate, it has little, if any, advantage in territory to the east. In 1908 a trainload of bananas averaged from 25 to 30 cars, but this average must be decreased by 3 cars, owing to the introduction of the practice of icing, from 3 to 5 tons of ice per car increasing the gross weight to that extent. Icing results in extra switching and slower transit. In 1908 refrigerator cars cost about $1,000 each, while now they cost $1,575. The I. C. R. R. and the N. O. & N. E. R. R. move about 90 per cent of the banana traffic from New Orleans, the I. C. R. R. hauling 17,789 cars in 1912 and the N. O. & N. E. R. R. 10,040 cars in 1913. The I. C. R. R. statement of extra expenses per car at New Orleans showed interest on investment, $5.06; loading, $6.00; wharfage, $3.60; false floors, $5.00; cleaning docks, 26c; slatting cars, 60c; clerical hire, 25c; and weighing, $1. The actual cost of equipping a car with false floors is about $9 and only about two-thirds of the floors are returned. But the extra cost attributed to the banana traffic at New Orleans applies, regardless of destination. Divisions on banana rates from New Orleans were, after deducting the wharfage charge: (1) on the rate to Kansas City, 26.8c to Memphis and 34.7c beyond; (2) on the rate to Topeka, 25.9c to Memphis, 33.6c to Kansas City, and 19c beyond; (3) on the rate to Hutchinson, 20c to Memphis, 26.5c to Kansas City, and 32c beyond; (4) on the rate to Lincoln, 20.7c to Memphis, 27.3c to Kansas City, and 21.5c beyond. Thus the lines west of Kansas City receive only their local of 19c on traffic to Topeka for a haul of 67 miles, yielding 5.67c per ton-mile, as compared with 1.35c per ton-mile east of Kansas City, while traffic from Kansas City to Lincoln, 200 miles, receives a division of 21.5c, yielding 2.15c per ton mile. HELD, that the rate on bananas in carloads from New Orleans to Topeka should not exceed the rate to Kansas City by more than 8c, and should not exceed rates from New Orleans to Lincoln and Beatrice. **Proposed Increased Rates to Lincoln and Beatrice.**—The New Orleans-Lincoln rate of 71c was based on the third-class differential of 4c over the Omaha rate, in turn the third-class differential of 4c over Kansas City; the same differential over Omaha being applied as on business from eastern points and St. Louis. Increasing the rate to Lincoln, 55 miles west of Omaha, to 80c would increase the differential, Lincoln over Omaha, to 13c. Whatever advantage one Nebraska jobbing point may have over another is offset by a difference in outbound rates to distributing points, and this increase of differential would destroy the parity thus established. HELD, that present rates from New Orleans to Lincoln and Beatrice are not unreasonably low, and that carriers have not sustained the burden of proof to show that the increased rates are just and reasonable. **Rates to Hutchinson and Wichita.**—Wichita is 961 miles and Hutchinson 1,009 miles from New Orleans via the route the banana traffic moves. Dealers at Wichita handle 200 cars of bananas annually, and at Hutchinson 110 cars, but 60 per cent comes through Galveston. Dealers at Independence, Kan., and Enid and Oklahoma City, Okla., who have a 73c rate from New Orleans, compete with dealers at Kansas City and Topeka. The service from New Orleans has been lengthened by a day;

from Springfield, Mo., the banana cars are handled on regular freight trains which run regardless of the banana traffic. HELD, that it would be unduly discriminatory against Hutchinson and Wichita to charge a higher rate thereto than is charged to Topeka from New Orleans. Rates from Galveston.—The price of bananas at Galveston is about the same as at New Orleans, varying from 90c to $2.40 per 100 lbs. Rates from Galveston are certain arbitraries over or under the New Orleans rate, i. e., (1) to points east of the Mississippi River, 10c higher; (2) to points on both banks of the Mississippi River, 5c higher; (3) to points west of the Mississippi River and east of the Missouri River, points in Missouri south of the Mississippi River, and Kansas points, same as New Orleans rates; (4) to Missouri River points, Kansas City and north, 5c lower; and (5) to points west of the Missouri River, north of Texas, including Oklahoma points, 10c lower. Thus the rate from Galveston to Kansas City is 58c; to Omaha, Lincoln and Beatrice, 62c; and to Topeka, Wichita and Hutchinson, 70c. The lines engaged in this traffic violate the fourth section by charging higher rates to Hutchinson and to other Kansas points than to Kansas City, Lincoln and Omaha. The cost per car of handling bananas through Galveston is made up of the following items: Wharfage and loading, $14; switching, $1.75; weighing, $1.50; false floors, $6; cleaning, $2; detention of cars, $7.20. HELD, that upon the decision of fourth section applications filed, the adjustment and relationship between the various points here involved will be determined. Reparation denied. Rates Bananas from Gulf Ports, 30 I. C. C. 510, 521.

(j) The Commission considered the proposed increase in rates on boots and shoes from Boston, New York, and other eastern port cities, via Norfolk, Charleston and Savannah, to Atlanta, Ga., via ocean-and-rail routes, from an any-quantity commodity rate of 95c to the first-class rate of $1.05. In 1909, in Kiser Co. v. C. of G. Ry. Co., 17 I. C. C. 430, the Commission condemned an increase from the then existing any-quantity commodity rate of 85c to the first-class rate of $1.05 and prescribed 95c as a maximum; but after the expiration of two years therefrom they contended that under the long-and-short-haul clause as amended the 95c rate would expose their higher intermediate rates to objection as illegal to a greater extent than when that case was decided; that increased use of fiber boxes had resulted in increased number and amount of claims for damages; and that continuance of the 95c rate tended to disrupt their rate adjustment to other points in the southeast. HELD that respondents had failed to justify the proposed increases, which were unreasonable to the extent they exceeded existing rates. Rates on Boots and Shoes from Boston, Mass., 31 I. C. C. 154.

(k) The Commission considered proposed increases in the rates on lumber from points in western North Carolina, eastern Tennessee, and northwestern South Carolina, via the S. Ry. to eastern points. The Tennessee lines had been acquired from the E. T. V. & G. R. R., and certain North Carolina lines from the R. & D. system, with the result that different rate bases prevailed in the two sections. Thus the rate to Norfolk, Va., on hemlock, spruce, oak, and walnut from Canton, N. C., was 16c, 16c, 16c, 19c for 479 miles; while the rates from Newport, Tenn., were 16½c, 20½c, 20½c and 22c, respectively. And to Baltimore the Canton rates were 18c, 18c, 21½c and 25½c, for 537 miles while the Newport rates were 20c, 24½c, 24½c and 26c for 566 miles. Under the proposed revision the rates would be equalized, so as to be from either point to Norfolk 18c, 18c, 19c and 21c, and to Baltimore 20c, 20c, 23c and 27c, respectively. To New York, all-rail, rates on spruce were 1½c lower from North Carolina and on oak and other kinds 2c higher than from Tennessee; to Philadelphia 5c and 5½c lower on spruce and 2c on oak and other kinds, An increase on all kinds of lumber from North Carolina to Baltimore, and reduction from Tennessee points, except on walnut, cherry and cedar, was proposed. The T. & N. W. R. R., an industrial line serving lumber interests, consisted of two disconnected sections; one from Crestmont, N. C., to Newport, and the other from Spruce, N. C., to Canton. The rates from Newport and Canton were made the same at the suggestion of their line; and the allowance of 2c per 100 lbs. formerly accorded the Newport branch was extended to the Canton branch. Advances proposed were to reductions in the ratio of 2½ to 1 and affected principally oak, the principal timber cut. Reductions were principally on hemlock and spruce, shipped principally

by the interests controlling the T. & N. C. R. R. To other industrial lines handling spruce no allowances were made. HELD, that the S. Ry. had not justified the proposed increases. Cancellation of proposed tariffs directed; but without prejudice to the right of respondent to present another plan of revision designed to bring about greater uniformity in lumber rates than existed at the time of hearing. Lumber Rates, S. Ry. Points to Eastern Points, 31 I. C. C. 244.

(l) The Commission considered proposed increases in the 15c rate on beer and other malt products from St. Paul, Minneapolis and Minnesota Transfer, Minn., and La Crosse, Wis., to Sioux Falls, S. D., and from La Crosse to Minnesota points. An increase of 20.1c was proposed from all points of origin to Sioux Falls, and 20c to Sioux City; and from La Crosse to Pipestone, Granite Falls, and Marshall, Minn., 20c, 26c and 18c, respectively, placing beer on a fifth-class basis. Minnesota interstate rates from St. Paul and Minneapolis to points in Minnesota near Sioux Falls and Sioux City and intermediate had been raised above the 15c rate. Beer usually took a fifth-class rating in western classification territory. HELD, that the respondents had justified the proposed increases. Rates on Beer and Other Malt Products. 31 I. C. C. 544.

(m) The Commission considered proposed increases in the rates on rough rice from Helena, Ark., to New Orleans and Vidalia, La., and Natchez, Miss., from 10c to 20c, C. L., and from 15c to 25c L. C. L. The most feasible route to New Orleans was via the St. L., I. M. & S. Ry., 446 miles. The rice shipped from Helena was not produced at that point, but shipped there from points up to 140 miles north, south and west of Helena. Respondents sought by the proposed increases to include Helena in a group with the points of origin of the rice, as to which the higher rates then obtained. HELD, that no good reason appeared why the same rate should not be charged for the transportation of rice from Helena to New Orleans, Vidalia and Natchez as was charged from other points within the blanket. Rice Rates from Helena, Ark., 31 I. C. C. 614.

(n) Endeavor to equalize the alleged discrimination against St. Louis not sufficient justification for the increase in rates to Memphis. Wheat Rates from Oklahoma, 30 I. C. C. 93, 97.

(o) No justification exists for increasing rates, which have long been established and which are not claimed to be unremunerative, simply to remove a discrimination caused by advancing rates at competitive points. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 520.

(p) A new increased rate might eliminate discrimination and yet be condemned for being unreasonably high. The fact, however, that it does eliminate discrimination should be given some weight in determining its propriety. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 421.

(q) Complainant attacked rates on produce from Pittsburgh to markets within a radius of 150 miles as unreasonable; those applying east of Pittsburgh also as unduly discriminatory compared with the rates west and south thereof. Prior to 1909 the carriers maintained special commodity rates to all these points, but in that year the rates to points west and north were canceled, thereby restoring the class basis. In Koehler Produce Co. v. P. R. R. Co., 27 I. C. C. 635, the Commission held that the class rate basis to points west and south was not unreasonable, but that it gave to shippers under the commodity rates east an undue preference. Accordingly, effective September 10, 1913, commodity rates east were canceled. The former commodity rates to east of Pittsburgh were 9½c compared with existing class rates ranging from 28c and 30c first class to 10c and 11c fifth class; to west of Pittsburgh commodity rates of 6½c to 8c compared with existing class rates of 10½c to 17c first class to 7½c to 8c fifth class. Under the former commodity rates the minimum was 24,000 lbs. Taking Wheeling as an illustrative point, the charge for a minimum carload was $19.20. Under the class rate this charge was greatly increased, depending on the character of the traffic, the charge being based upon the highest rated article. Pittsburgh is an important distributing point for produce, surrounded by territory growing only small quantities of produce, and hence almost wholly dependent on shipments from other points. The evidence failed to support the contention that the movement is decreased by the application of the class rates. The former carload commodity rating approximated fifth class. The present class rate basis ranges from fifth to first class on carloads and from fourth

to one and one-half times first class L. C. L. The existing carload rating on apples, pears, quinces, potatoes, cabbage, carrots, onions, turnips, and similar commodities was fifth class; fresh vegetables, tomatoes and the like, fourth class; bananas, pineapples and oranges, third class; grapes, second class; berries and peaches, first class. The carriers maintained produce yards at Pittsburgh, where produce may be inspected, etc. and outbound shipments may be loaded into cars. Such methods of handling this traffic benefit the shipper as much as the carrier, as it gives him a chance to sell direct from the car and fresh for the opening market. **Rates East of Pittsburgh.**—While rates east of Pittsburgh were higher than for equal distances west, the only competition shown between points east and west was that between Wheeling and Morgantown, W. Va. Wheeling is 69.7 miles from Pittsburgh and Morgantown 102 miles. The revenue per ton mile on the five classes was about 8 per cent higher than to Wheeling. Wheeling is on the Ohio River and in C. F. A. Territory while Morgantown has no water competition and is in Trunk Line Territory. Long existing different adjustments in these territories make different bases of rates. The increase permitted in the Five Per Cent Case, 31 I. C. C., 350, will bring these rates nearer together. The commodity rates formerly maintained and now sought by complainant were never maintained from any other market served by defendants. The commodity rates west were cancelled to satisfy protests from produce dealers at Cleveland, O., Columbus, O. and Baltimore, Md. The commodity rates east were cancelled to satisfy the Commissioner's order in the Koehler case, supra. From all these points and from all markets reached by defendants the class rates were applied. HELD, that the rates in issue were not unreasonable or unjustly discriminatory and that defendants have justified the advanced rates. Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C., 12.

(r) The Commission investigated tariffs by which rail-and-lake commodity rates on knit goods from Albany, N. Y. and Albany rate points including Utica to Chicago, St. Louis and Minneapolis and other points were to be abrogated and the Official Classification basis of first class applied. These rates applied from the points of origin to the Mississippi River, including points in C. F. A. Territory, and as parts of combination rates to points west of the River. There were no commodity rates on knit goods from Trunk Line territory except the rail-and-lake rates herein involved, the rate to Chicago, taken as typical, being 44c, sought to be increased to the first class rate of 50c, while the differentials of 6c and 8c over the Albany rate were retained from the points taking these differentials. There were many knitting plants in the territory involved, sometimes called the Mohawk Valley-Hudson River District, and a large traffic and revenue were involved. Knit goods include any garment made on a knitting machine but here were considered as including only underwear. Hosiery is not manufactured in this district. The rate history shows many fluctuations. The Albany-Chicago rate in June 1896 was 35c; in 1902, 30c; in 1903, 35c; in April 1907, 43c; in July 1907, 44c. In addition, the all-rail rates have been raised or lowered in all forty-two times since 1867, without any change at the same time in the rail-and-lake rates, while the latter in the same period have been raised or lowered nineteen times without any change at the same time in the all-rail rates. In their inception the rail-and-lake rates in question were the result of canal competition but that competition was eliminated as far back as 1907. At that time the carriers attempted to raise the commodity rates to the class basis, but the opposition was so vigorous that the commodity rate of 44c to Chicago was established. The basis for the construction of rail-and-lake rates is the all-rail rates, the former being uniformly differentials under the latter. The rates in question were not founded on all-rail rates, since there are no all-rail commodity rates on this commodity, and these lake-and-rail rates violate the fixed relation between the all-rail and rail-and-lake rates in these territories. The evidence tends to show that the existence of these lake-and-rail commodity rates in the absence of corresponding all-rail rates has caused discrimination as between manufacturers of knit goods. HELD, where a commodity rate is made for a manufactured product capable of classification, a certain equilibrium between competing points of manufacture should be preserved, if possible. and only some peculiar circumstance or condition can warrant the maintenance of a commodity rate from

a few points of manufacture in a limited locality, while the class rate basis as to the same commodity is maintained from all other points of manufacture. The proposed restoration of these rates will bring them into harmony with the established rate structure. Increases of rates made for that purpose repeatedly have been sustained. Advance allowed. Westbound Lake and Rail Knit Goods Commodity Rates, 32 I. C. C., 54.

(s) The Commission repeatedly has sanctioned increases of rates for the purpose of bringing such rates into harmony with the established rate structure. Westbound Lake and Rail Knit Goods Commodity Rates, 32 I. C. C., 54, 57.

(t) The Commission investigated proposed advances in the class rate between Shreveport, La. and Texarkana, Ark-Tex, and the rates on beer, beer substitutes and agricultural implements, C. L., from Shreveport to Texarkana, and the rate on candy, L. C. L., from Texarkana to Shreveport. Texarkana is on the boundary line between Arkansas and Texas, north of Shreveport, approximately 72 miles via the T. & P. R. R., 73 miles via the K. C. S. Ry., 92 miles via the St. L. S. W. R. R. and 141 miles via the La. & Ark. and St. L. I M. & S. Rys. Shreveport is on the Red River and both points are jobbing centers. The existing class rates (first class to class E) between Shreveport and Texarkana were 50c, 39c, 25c, 20c, 17c, 18c, 15c, 15c, 15c and 12c; the proposed rates 50c, 43c, 33c, 26c, 22c, 24c, 20c, 18c, 16c and 12c. The class rates from New Orleans to Shreveport were 60c, 50c, 40c, 30c, 22c, 25c, 20c, 17c, 16c and 15c; from New Orleans to Texarkana $1.10, 93c, 73c, 56c, 44c 49c, 40c. 35c, 32c and 23c. The proposed increases were the exact amounts necessary to equalize the combinations on Shreveport with the through rates New Orleans to Texarkana, except as to Class E. Where no specific rates existed between Shreveport and Texarkana one purpose of the increases was to bring the rates more nearly in line with those carried by respondents in their distance tariffs. The existing class rates between Shreveport and Texarkana had been in effect since June 15, 1911. For some time prior to that date the rates were the same as those proposed on classes 2 to 5, inclusive and A and B. They were higher than the rates proposed on classes C, D and E. The general tendency of comparisions submitted was to support the proposed increases. Reference was made to class rates in Louisiana and Arkansas and other parts of the territory for distances of 70 to 75 miles, which were in most instances higher than the rates under investigation. It was proposed to bring about a normal adjustment, not only with respect to fourth section violations, but also as to the reasonableness of the rates themselves, and to do so in such manner as not to disturb other rate adjustments heretofore referred to. The movement between Shreveport and Texarkana is almost entirely confined to the first four classes. The present commodity rate on beer and beer substitutes, C. L., from Shreveport to Texarkana is 17c per 100 pounds. In the reverse direction the class rate of 17c applies on beer and 25c on beer substitutes. The existing commodity rate on "parts of agricultural implements, C. L., from Shreveport to Texarkana is 12c but in the reverse direction it is 18c. It was proposed to cancel both these commodity rates and leave in effect the class rates in both directions of 22c on beer, 33c on beer substitutes and 24c on agricultural implements. The existing rate on candy, L. C. L., from Texarkana to Shreveport is the third class rate of 25c. It was proposed to establish a commodity rate of 31c. The movement of these commodities between the two points was irregular and very light. Rates for similar distances in the same territory were from 35c to 40c on beer and beer substitutes, C. L. and 47c to 54c on candy, L. C. L. HELD, as to these commodity rates the proposed increased rates, especially in view of the light movement between Shreveport and Texarkana, should be allowed to become effective. Inasmuch as the relation proposed on the class rates is similar to that prescribed by the Commission in the Iowa Case, 28 I. C. C., 563, and in view of the facts of record, the carriers have justified the proposed increased rates. Rates between Shreveport and Texarkana, 32 I. C. C. 180.

(u) The reasonableness of proposed increased rates cannot be established simply by pointing to Fourth Section violations which are thereby obviated. Rates between Shreveport and Texarkana, 32 I. C. C., 180, 182.

(v) The Commission investigated proposed cancellation of joint through

class rates applicable on traffic from Terre Haute, Ind. to points on the Missouri River. Joint through class rates from Terre Haute to the Missouri River were established by the C. & E. I. R. R. and the Vandalia R. R. in November, 1909. Prior to May 1909 the class rates of both carriers had been made by combinations on the Mississippi River crossings, which was the normal basis of rates from points in C. F. A. territory east of the Illinois-Indiana state line to Missouri River points. The proposed cancellations would reinstate this basis from Terre Haute. In any case the lowest combination would govern, which might be a combination of class rates or of a class and a commodity rate. Most of the shipments from Terre Haute to the Missouri River move in carloads on commodity rates and would not therefore be affected if the proposed cancellation of class rates should become effective. In general, however, the less-than-carload rates would be increased, although the differences would vary, owing to the application of different classifications east and west of the Mississippi River. HELD, that respondents have justified the proposed increases. Class rates from Terre Haute, Ind., 32 I. C. C., 206.

(w) Complainant attacked the class rates and certain commodity rates between Houston, Tex. and points in Louisiana, as unreasonable and unduly preferential to such competitive points as St. Louis, Little Rock, Fort Smith, Memphis and Kansas City. The whole system of rates between Texas and Louisiana points was admittedly imperfect and unsatisfactory. Many of the commodity rates were higher than corresponding class rates. Some of the westbound rates were lower than those eastbound, and there were a number of errors in the tariffs. The rates attacked were carried in a tariff which was superseded by a later tariff designed to meet some of complainants' objections. This latter tariff, however, was full of errors and inconsistencies.. The Louisiana points involved may be divided into two groups, namely: (1) the so-called gateways, such as Shreveport, Alexandria, Baton Rouge, Crowley, Oakdale and Napoleonville, and (2) the smaller interior points. The rates to the gateways prior to the publication of the new tariff which attempted to adjust some of the rate incongruities were admittedly reasonable, but it was claimed that the rates to the interior points were still excessive. For example, it appeared a 70c scale was effective to Alexandria, while a scale of $1.37 was applied to Boyce, a local station on the T. & P. R. R. a short distance above Alexandria. Again, it appeared Shreveport was on a 60c basis, while it was $1.37 to Stonewall, a local station on the T. & P. Ry. a few miles south. The application of the $1.37 scale from Houston to Louisiana points was explained by the fact that it was the scale from New Orleans to Texas common points and was applied in the opposite direction for shipments from Texas common points to New Orleans territory. In R. R. Com. of Tex. v. A. T. & S. F. Ry. Co., 20 I. C. C. 463, the Commission established a $1.47 scale from St. Louis to Texas common points, and New Orleans enjoys a differential of 10c under St. Louis. The rate from New Orleans to Houston is 80c, the lower basis being applied on account of gulf competition from Galveston. When the first tariff was published, the rate was established from Houston to Vicksburg and to intermediate points on the V. S. & P. Ry. It appeared it was an error in applying this rate to the latter points, as it is not applied to other intermediate points. Complainant's position was set forth in their request that (1) the present rates to the gateways be maintained; (2) that a maximum scale of 80c now in effect to all points on the V. S. & P. Ry. be maintained; (3) that a maximum scale of 80c be ordered, applicable to all points south of the V. S. & P. Ry.; (4) that a maximum scale of 80c be made applicable to all points north of V. S. & P. Ry., unless the Commission finds that this would work a disturbance of the 86c maximum from Little Rock, in which event it is asked that an 86c maximum be established. HELD, in view of the fact that the Houston-New Orleans scale of 80c is water compelled, while many of the interior points are not so situated as to be entitled to this advantage, the third request is denied. While in some cases the rates from St. Louis were less for the shorter than from Houston for the longer distance, consideration had to be given the Mississippi River competition from St. Louis and the greater volume of traffic from that point. As compared with other jobbing points in Texas, Houston had a decided advantage, due to its location near Galveston and the Gulf, and to establish the 80c scale from Houston to points

south of the V. S. & P. Ry. would disrupt the Texas common point system, and hence the establishment of this specific rate cannot be granted. **Rates in General from Houston to Louisiana.**—Prior to the hearing defendants submitted to complainants a plan of compromise, under which the rates to the interior points be made by adding to the rates to the gateways the locals beyond, with the $1.37 scale as a maximum. HELD, since the rates to the gateways are admittedly reasonable, the combination rates, as indicated, should not be exceeded, and with such exception the compromise plan should be adjusted. **Increased Class Rates to V. S. & P. Ry. Points.**—In the publication of the old tariff, class rates on the 80c scale were made applicable to all points on the V. S. & P. Ry., this being, according to the carriers, an error, the intention being to make this scale apply only as a maximum to Vicksburg on traffic destined to points in the southeast. HELD, the fact that the rates were published in error does not relieve the carrier of the burden of justifying the increased rates. But the Commission may take into consideration the circumstances under which the rates were published. There seems to be no reason for holding that the Houston-New Orleans scale of 80c should be applied as a maximum to points on the V. S. &. P. Ry. but the rates should not exceed the approved combination of locals with the $1.37 scale as a maximum. **Rates to Points between Alexandria and Torian.**—It was proposed to increase the first class rates from 70c to 80c and the second class rates from 60c to 64c between Houston and points on the M. L. & T. R. R., Alexandria to Torian, inclusive. Torian is four miles north of La Fayette. The 70c rate was of long standing. The Houston-New Orleans rate of 80c was applied originally to intermediate points and when the Frisco built into the territory the rate was reduced to 70c. However it did not appear the establishment of a 70c competitive rate at Opelousas affected materially the question whether an 80c rate from Houston to all these points is reasonable. As to the service performed, defendants show that the 80c rate is applied to Jeannerette, a point on the Southern Pacific about as far from Houston as the average distance to the points in question. HELD, it is clearly incumbent upon the carriers to give convincing reasons why they should materially increase rates of such long standing. Advance denied. **Increases to Points on the Louisiana and Western.**—Objection was made to proposed increases from a 60c scale to an 80c scale in class rates from Houston to two groups of stations on the La. & Western Ry. The first embraces stations from Maignaud to Rupert, these stations lying between Eunice and Midland. The second group embraces Morse, Gueydan, Kaplan, Lastie and intermediate points, these being located on a branch line extending from Midland to Abbeville. Defendants admitted that the publication of the 80c scale as applying to the first group was an error, although not admitting the unreasonableness of the rate per se. They express a willingness to apply a 70c scale. As to the second group, the increase was explained on the theory that the volume of traffic is light, the points being located on a branch line. HELD, since there was no evidence that transportation conditions had changed; and in the absence of evidence tending to show that the old rate was unremunerative, an increase of 33⅓ per cent is not justified. However, since the 70c scale is to be applied to the other points, the 60c rate to these points appears out of line, and rates to these points should not exceed the 70c scale. **Increases in Certain Commodity Rates.**—Protests were entered against (1) Increase in the rate on soap and washing powder from Houston to New Orleans and group 4 points, from 29c to 30c. The only explanation offered for this was that the New Orleans-Houston rate was 30c. HELD, no other evidence having been offered, the burden of proof was not sustained. (2) The increase in rates on the same product from Houston to Lake Charles and West Lake, from 15c to 26c. Houston is in the Galveston-Texas City group, from which the 26c rate applied to Lake Charles. The carriers contended that the 15c rate is unreasonably low, the distance to Lake Charles being 144 miles, while from Port Arthur, a competitive point on seaboard traffic, only 50 miles distant, the rate was also 15c. HELD, the old rate was evidently out of line and the increase allowed. (3) Increases in the rate on scrap iron in carloads from New Orleans and New Iberia to Houston from $2.50 per ton of 2,000 pounds to $3.20 per ton. The same increase was made from New Orleans to Beaumont. The $2.50 rate to Beaumont was established some time ago for the stated purpose of developing the scrap iron business

at Beaumont, this being a reduction in the previous rate. As a result a substantial amount of traffic moved. In the opposite direction the class rate of $3.20 was applicable and the carriers stated that it was for the purpose of equalizing with this rate that the commodity rate was cancelled, leaving the class rate in effect. The distance from Houston to New Orleans is 362 miles; from Beaumont 278 miles. The $2.50 rate yields 6.9 and 8.9 mills per-ton-mile respectively. HELD, a disparity between two rates can as logically be removed by a reduction of the higher rate as by an increase in the lower. In the absence of proof that the higher rate is reasonable a carrier which advances a rate to the level of another rate does not sustain the burden of proof imposed by the statute by merely pointing out that the object of the increase was to remove the disparity. Considering per-ton mile-earnings the rate of $2.50 on this commodity does not appear unreasonably low; and the carriers have not justified the proposed increase. **Protest of Orange Commercial Club.**—The Orange Commercial Club protested against proposed increases in the class rates from Orange to Leesville and certain other points on the Kansas City Southern Ry. north of De Ridder and south of Leesville. It was proposed to substitute a 90c scale for a 50c scale in effect. The 90c scale applies to all points on the Kansas City Southern beginning at De Ridder and extending as far north as Arkansas. The only defense of this increase offered was the contention that the 90c scale was applied over a considerable distance and that any group rate had to begin somewhere. HELD, the increase was not justified. **Fourth Section Violations.**—It was admitted by the carriers that the tariff contained many violations of the fourth section. It is probable that there still are such instances; and the carriers will be expected to see that such violations are eliminated or that they are protected by application to the Commission. It will be left to the carriers to revise their tariffs in accordance with the findings herein. If the tariffs are not filed by February 20, 1915, an appropriate order will be issued. Chamber of Commerce, Houston, Texas, v. I. & G. N. Ry. Co., 32 I. C. C. 247.

(x) A disparity between two rates can as logically be corrected by lowering the higher rate as by increasing the lower rate. In the absence of proof that the higher rate is reasonable, a carrier which advances the rate to the level of another rate does not sustain the burden of proof imposed by the statute merely by pointing out that the object of the increase was to remove the disparity. Chamber of Commerce, Houston, Texas, v. I. N. G. Ry. Co., 32 I. C. C. 247, 259.

(y) The mere fact that carriers may have to reduce intermediate rates if they do not increase terminal rates does not justify such an increase. Cement Rates from Points in Illinois, 32 I. C. C., 369. 372.

(z) There are cases where increased rates may be proper to secure uniformity in rate relationship, but it is to be remembered that uniformity may be secured in many cases by reduced rates as well as by increased rates. The mere fact that a relation of rates requires readjustment in the interest of uniformity is not proof that rates increased to the level of relatively higher rates are reasonable. Rates on Lumber. 32 I. C. C. 494, 496.

(aa) The Commission considered the proposed cancellation of a commodity rate of 35c, minimum 50,000 lbs., on mixed carloads of cement. lime, plaster roofing pitch and salt from St. Paul, Minneapolis and points at the head of the lakes to N. P. Ry. stations, from the Dakota-Montana line to Custer, Mont., and on the C. M. & St. P. Ry. from Buffalo Springs, N. Dak., to Musselshell, Mont. In 1914, rates on cement in straight carloads between the points involved were increased 5c; and in many cases a small quantity of a second commodity was frequently added to ship what was practically a straight carload at the lower rate. Existing rates to points involved on the N. P. Ry. were 45c on salt, C. L., on cement, 40c; to points on the C. M. & St. P. on salt from 35½c to 55c, minimum 30.000 to 37,500 lbs., and on cement from 35c to 40c, according to distance. HELD, that, it appearing that the proposed cancellation would make the same basis of rate applicable to all points of origin and destination on the line of each respondent carrier in the territory involved, cancellation of the 35c rate applicable on mixed carloads between the points designated was justified. Order of Suspension vacated. Rates on Cement, Lime, Salt. Etc., 32 I. C. C., 532.

(bb) The Commission considered a proposed increase from $1.60 to $2.00 per ton in the rates on fertilizer material. (except acid phosphate,) in carloads from Charleston, S. C., to Wilmington, distant 212 miles, Acme and Navassa, N. C. From Wilmington to Charleston, the existing rate was $2.00; between Wilmington and Norfolk, Va., $2.00 for a haul of 240 miles in either direction; and from Savannah, Ga., to Wilmington, $2.50 for 327 miles. The South Carolina state rate for 212 miles was $2.70, the North Carolina rate $2.75. Existing rates to stations on the route from Charleston to Wilmington for distances exceeding 115 miles were higher than the rate proposed to Wilmington. HELD, that the proposed rate of $2.00 on fertilizer material from Charleston to the destinations in question was justified. Orders of suspension vacated. Rates on Fertilizer Material from Charleston, 32 I. C. C., 537.

(cc) While the fact that a proposed revision of general upward tendency will remove present inequalities as between competing points may not of itself prove the reasonableness of the increased rates, it is entitled to serious consideration as tending thereto. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C., 551, 557.

(dd) The Commission considered proposed increases averaging 2c per 100 lbs. in the northbound rates on lumber, principally hardwood, and wood products from points in Missouri, Arkansas, Louisiana, Oklahoma and Texas to St. Louis, Thebes and Cairo, Ill., Memphis, Tenn., Cincinnati, Ohio, Missouri river points, and other points taking the same rates or rates based thereon. The existing rates had been established over 25 years before, when the southwestern hardwood industry was in its infancy to yield a measure of protection against competition. As the industry spread to the more remote southwest the hardwood rates had been made to approach more closely the yellow-pine scale. Many branch lines had been absorbed by the trunk lines and the junction point rate accorded to the branch-line mill. The proposed rates would narrow the existing rate margins, reaching the yellow-pine blanket rate as a margin further north than before. Hardwoods loaded 25.39 tons to the car; yellow pine 23.89. The value of the two commodities at time of shipment corresponded closely. Certain rates on hardwood from territory north of the Arkansas river to Missouri river points, exceeding existing yellow-pine rates, were proposed; while proposed hardwood rates from Cairo and points from which the same rates applied to Missouri river points would exceed existing rates from 3 to 4c. It was also proposed to raise the rates from southeastern Arkansas points south of a line drawn from Camden to Arkansas City, Ark., to St. Louis and East St. Louis, Cairo and Thebes and Memphis, from 16, 13 and 11c to 19, 16 and 14c. HELD, that the rates proposed were reasonable, with the following exceptions. (1) Rates which exceeded the existing rates on yellow-pine for the same hauls: (2) Rates from Cairo and points from which the same rates applied to Missouri river points and points taking the same rates or basing thereon, in so far as they exceeded the existing rates by more than 2c; and (3) Rates from southeastern Arkansas points to St. Louis, East St. Louis, Cairo, Thebes and Memphis, and points taking the same rates or basing thereon, in so far as they exceeded existing rates by more than 2c. Proposed increases on yellow-pine and cypress lumber not justified. Northbound Rates on Hardwood, 32 I. C. C. 521.

(ee) The Commission considered proposed joint through rates on grain and grain products from points in Kansas, Nebraska, Colorado, and Wyoming to points in Iowa, Wisconsin, and other states. Proportionals of 10½c on wheat and 9½c on grain were named from the Missouri River to the Iowa points, in lieu of rates of 9c and 8c published in error. It was proposed to cancel the existing through rates to the Wisconsin points, leaving traffic subject to the sum of the intermediates, bringing the rates into harmony with the prevailing basis in the territory under consideration, and resulting in an increase of 3¾c. HELD that the proposed rates were justified. Rates on Grain and Grain Products from Topeka, 33 I. C. C., 666.

(ff) Reasonableness of proposed increases can not be established by pointing to fourth section violations that are thereby obviated. Rates between Shreveport and Texarkana, 32 I. C. C., 180, 182.

(gg) That carriers may have to reduce intermediate rates if they do not increase terminal rates can not justify advance in rates. Cement Rates from Points in Illinois, 32 I. C. C., 369, 372.

(hh) Uniformity may be secured in many cases by reduced rates as well as by increased rates. Rates on Lumber, 32 I. C. C. 494, 496.

(ii) The mere fact that a relation of rates requires readjustment in the interest of uniformity is not proof that rates increased to level of relatively higher rates are reasonable. Rates on Lumber, 32 I. C. C. 494, 496.

(jj) Rate on dry glue from Milwaukee and Cudahy, Wis., to Winston-Salem, N. C., lower than rate from Carrollville, Wis., an intermediate point, advanced after shipments moved. HELD, not unreasonable. United States Glue Co. v. C. & N. W. Ry. Co., Unrep. Op. A-930.

(kk) That proposed increased rates may eliminate fourth section departures does not establish that the rates published are reasonable. Ice Rates to Long Branch, 35 I. C. C. 73, 75.

(ll) The Commission considered the proposed cancellation of commodity rates on drain tile in carloads from St. Anne, Woodland, Kankakee, and Beaverville, Ill., to stations in Wisconsin, Minnesota and the northern peninsula of Michigan. Existing rates from the named points of origin to Grand Rapids, Wis., were uniformly 9c; proposed rates, 12, 12, 11, and 11c for distances of 305, 327, 298.3, and 314.3 miles. Rates from Des Moines and Mason City, Iowa and from Gilberts, Dundee, and Streator, Ill.; competitive points, to Grand Rapids, were 9, 9, 9, 9, and 11c for distances of 550.3, 238.1, 245, 229 and 316 miles. Shipments from St. Anne and Woodland to Grand Rapids yielded 5.5 mills, and from Gilberts, Dundee and Streator, 7.3, 7.8, and 6.9 mills, per ton-mile. HELD, that respondents had failed to justify the proposed increases. Drain Tile from Illinois Points, 35 I. C. C. 63.

§5. (3) To Preserve Commodity Relationship.

See Classification §17; Comparative Rates, Relative Rates.

(a) The rates on flax-seed from points of origin to the various consuming markets should bear a consistent relationship to one another and to the rates on wheat and other grain; and proposed increases in the rate on flax-seed will not be allowed unless rates to competitive markets are also increased to a level correspondingly higher than the wheat rate to those markets. Rates on Flax-seed, Minneapolis to Fredonia, Kan., 29 I. C. C. 633, 638.

(b) The propriety of an increase on one kind of paper coincident with a reduction on all other kinds of paper, found to have been established. Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis., 28 I. C. C. 305.

(c) From among a large number of suspended tariffs, the Commission considered only four against which protests were filed: (1) Reshipping rates on malt from Milwaukee and Chicago to points in Central Freight Assn. Territory and Western termini of trunk lines; (2) rates on certain by-products of grain, higher than rates on grain products; (3) proportional rates from upper Mississippi River crossings as compared with those of lower crossings, and (4) rates on grain and grain products to various markets from Illinois points of production. **Rates on Malt.**—The rates involved were what are known as reshipping rates from Chicago to various eastern points. As typical of the situation, it was proposed to advance reshipping rates on malt from Chicago to Pittsburgh to 10½c, the ordinary grain product rate. There is a joint through rate on malt from Minneapolis to Pittsburgh of 18c; and at the same time there is a rate on malt and barley from Minneapolis to Chicago of 7.5c and a reshipping rate to Pittsburgh of 9.2c, producing a combination from Minneapolis to Pittsburgh of 16.7c. The latter rate enables the maltster to bring his barley to Chicago, malt it, and send on the product at 1.3c less than he would pay at Minneapolis on his malt. The reshipping rate on grain from Chicago to Pittsburgh is 10c. Only under abnormal conditions is the rate on malt lower than that on the grain from which it is made. Malt competed with certain substitutes manufactured from corn, but the latter took the ordinary grain products rate and would not be discriminated against by an increase in the rates on malt. The rates on barley from points intermediate between Minneapolis, and Chicago and Milwaukee, exceeded the proportional rate from Minneapolis. HELD, that even if the imposition of a higher intermediate rate be wrong, it cannot be corrected by requiring carriers leading south from Chicago to establish a lower rate on malt, when manufactured in Chicago or Milwaukee, than on malt coming from Minneapolis. Proposed increases held justified. **Rates on By-Products.**—Increases of 1c per 100 lbs. were proposed upon by-products of grain shipped from the Miss-

issippi River to points in Central Freight Assn. Territory, while the rate upon grain products remained the same. "Gluten feed" and "mixed feed" are produced in the manufacture of grain products, and though less directly related to the grain itself than the ordinary grain product, are of equal value and are transported at the same cost. Respondents sought to justify an increase on these and other by-products by stating that it had come about by withdrawing from the by-product the benefit of the reshipping rate and confining it to the local rate. for the reason that by-products cannot be milled in transit, under rules applicable in Central Freight Assn. Territory. HELD, that grain products and by-products having gone under the same rate, when this rate is increased against the manufacturers or the by-product it should not take the local rate while grain products are entitled to a reshipping rate. Advance denied. **Rates from Upper and Lower Mississippi River Crossings.**—The same proportional rates to points in Central Freight Assn. Territory obtained from both upper and lower crossings. The tariffs under suspension sought to withdraw them from the upper crossings while leaving them in effect from the lower. The rate to St. Louis from Iowa points was greater than to the upper crossings; but grain produced in Iowa naturally moves to Central Freight Assn. Territory through the upper crossings, and that grown in Missouri, through the lower. In the past the rates were equal from both crossings so that all gateways might be open to the territory west of the river. HELD, that nothing in the record justifies the increase from the upper crossings to the benefit of the lower crossings and that the present rates are reasonable and should be continued. **The General Increase.**—Certain proposed tariffs worked a general increase in grain rates from Illinois points to markets of consumption of from ½c to 1½c, an average of approximately 1c per 100 lbs. Although Illinois is divided into territorial groups, to which percentage rates are applied on most commodities, grain rates are not so stated. The state is traversed by a number of east and west lines converging on New York and the eastern seaboard, intersected by a number of north and south lines converging on Chicago. There are also certain lines entering Chicago from the east which do not tap the state to any great extent. These lines and the merchants of Chicago, the greatest grain market of the United States, were desirous of handling the grain of Illinois, as were also the north and south lines. To divert a portion of the grain from the east and west short lines, grain rates from Illinois points were early made the same through Chicago as by the direct line, though the distance might be much greater. The abuse of certain transit privileges at Chicago led to their discontinuance and the establishment, by the carriers leading east from Chicago, of what are known as reshipping rates. Whereupon the north and south lines established "proportional rates," the sum of proportional and reshipment rates equaling the through rate by the direct line. While the bulk of grain was shipped to the East, some was shipped to the Southeast, South and Southwest, through rates being formed by combinations on the Mississippi and Ohio River gateways. The increases proposed would be effected by increases in the proportionals of from ½c to 1½c, with corresponding increases to the river gateways. The increases applied equally in all directions, no relation in rates being disturbed. Under the plan of increase the entire benefit of increased rates would accrue to the Illinois north and south lines. In five years ten of these lines had added $100,000,000 new capital to their properties, and their gross revenues had increased by $46,000,000 while their operating revenue had remained unchanged. Existing rates from Illinois to the Atlantic yielded a very low per ton mile as compared with the general level of rates and with certain other commodities; but rates from Indiana on the east, and from territory beyond the Mississippi on the west, were about equally low. The proposed rates, exceed existing rates throughout the state by approximately ¾c, and the percentage rates exceed the proposed rates by 0.4 per cent. The proposed rates are on the average less than would result from the application of the percentage groups to these rates. The present relation, however, is not disturbed. HELD, that the proposed general increase in rates was justified. Grain Rates in Central Freight Assn. Territory, 28 I. C. C. 549.

(d) The Commission considered proposed changes in the classification of vegetables and fresh fruits from California points to Arizona and Nevada points. In Western Classification such

products are rated first, second and third class, L. C. L., and third, fourth and fifth class and class C., C. L; but an exception sheet provided for fourth class L. C. L. and class C for carloads. The carriers preferred to cancel the exceptions, thus making effective the current Western Classification. **The Nevada Situation.**—As to Nevada, the proposed classification would materially increase rates. The original exceptions to Western Classification were made as a means of publishing commodity rates. The carriers contended that this was a mistake, it being obviously improper to classify fruits and vegetables, bulky and highly perishable, with nails, bar iron, sugar, canned goods, and other commodities not perishable and loading much heavier. Fruit and vegetable shipments are made almost entirely in refrigerator cars, and the service is an expedited one in through trains. They urged that they should be permitted to abolish the unscientific process of making commodity rates by exceptions to the classification, and promised if this were permitted, to meet any change in the volume of movement of fruit and vegetables by the establishment of carload commodity rates. Since 1894 the rates to Nevada had been materially reduced; for instance, on shipments from Sacramento, Cal., to Reno, Nev., the rates on all classes had been reduced from ½c to 44c per 100 lbs. But in 1894, rates were governed by Western Classification and contained no exceptions. Reductions had also been made in intrastate rates in Nevada. On shipments from Sacramento to Reno, a distance of 154 miles, the class C rate applicable to fruits and vegetables was 28c, yielding 3.634 mills per ton-mile, whereas under the class 5 rating, which it was proposed to apply, the rate would be 43c, yielding 5.581 mills per ton-mile, an increase of 53.57 per cent. The percentage of increase would range from 50.98 to 82.38 per cent, according to the destination. The present rates to Nevada destinations on the S. P. Ry. Co.'s system were about three times the average receipts per ton mile, while some of the proposed rates would be as high as five times the average. On shipments which formerly paid $5,528.57, the charges would be $8,397.27, making a proposed increase of $2,868.70 and a percentage of increase of 51.888 per cent. Percentages of increase in the intrastate rates would be, if anything, higher than for the interstate rates. From Sacramento to Elko, Nev., the rate is 38c, or 22c per car mile for a distance of 467 miles, as compared with a rate of 35c, yielding 19c per car-mile. for a distance of 484 miles. In case of the Oregon traffic, commodity rates were also published less than the class rates. HELD, that whether the matter be considered from the aspect of abstract classification, or from the aspect of the amount of rates applicable to the traffic in question, respondents have not sustained the burden of justifying the proposed increase. **The Arizona Situation.**—The suspended schedule was filed on June 16, 1913, at which time no commodity rates applied, the traffic to points on the Santa Fe, Prescott and Phoenix lines of the A. T. & S. F. Ry. and points on the A. E. Ry. being covered by class rates governed by Western Classification and exceptions thereto, which the suspended schedule proposed to supersede. On the ten numbered and lettered classes the rates from San Francisco to Phoenix and Prescott were $2.23, $1.88, $1.67, $1.51, $1.24, $1.33, $1.07, 97½c, 82½c and 79c; and from Los Angeles, Cal., to the same destinations, $1.94, $1.67, $1.55, $1.42, $1.15, $1.24, 83½c, 77½c, 65½c and 63¾c. The exceptions provided less-than-carload rating of class 4 and carload rating of Class C on fresh fruits and vegetables. Prior to the filing of the tariff under suspension, the carriers filed one materially reducing the class rates given above, which went into effect on July 15, 1913, under the old classification. Under this tariff the carload rate on class C became, on shipments from Los Angeles to Phoenix and Prescott, 55c rather than 77½c. The rates continued to be the new reduced class rates under the old classification until August 10, 1913, when supplement No. 4 to I. C. No. 138 went into effect, establishing the ratings proposed in the suspended schedule. It was established by permission of the Commission, upon representations and on condition that rates should not be higher than those in effect prior to the reductions of July 15. It established commodity rates on the basis of the old class C rate, of 77½c, from Los Angeles to Prescott and Phoenix; but as to less-than-carload shipments, the tariff established the suspended ratings of first, second and third class, thus resulting in increase of rates, contrary to the understanding under which the tariff was issued. But this was corrected by a supplement making reductions in the carload rates and providing commodity rates

for less-than-carload shipments, of $1.51 from San Francisco to Phoenix and Prescott and $1.42 from Los Angeles. To recapitulate: The new classifications proposed in the suspended tariff have become effective by a subsequent tariff issued, by special permission; the class rates have been reduced and are lower than those in effect at time of filing suspended tariff; the class rates, however, are no longer applicable, their place being taken by commodity rates in general, on the same basis as class rates in effect when the schedule was filed. Item 53-C of the exception sheet, which the suspended schedule proposed to supersede, applies to lines serving Arizona other than the ones covered in the mentioned tariffs. The situation with reference to such other lines was as follows: Rates on fruit and vegetables from California points to Arizona points on the S. P. Ry. were class rates governed by Gomph's exceptions, carload shipments taking the class C rate The company subsequently established commodity rates on shipments of fresh fruits and of fresh vegetables in straight carloads; in the main, reductions from prior class rates on straight and mixed carload shipments. Subsequent to the order of suspension, commodity rates equal to class C rates were established on mixed carloads. To Arizona points on the E. P. & S. W. R. R., the A. E. Ry., A. & N. M. Ry., and the Morenci Southern Ry., on less-than-carload shipments no commodity rates are applicable, shipments taking the fourth-class rate under Western Classification and Gomph's exception sheet. A tariff effective Oct. 1, 1913, established to some points commodity rates which were reductions from former class rates, but advances over the class C rates, as reduced by such tariff. S. P. Ry. less-than-carload shipments being still governed by class rates, would be affected by the proposed change in ratings, while carload shipments, being under commodity rates, would be unaffected. In comparison with the California-Oregon rates of the S. P. Ry., it was pointed out that from Sacramento. Cal., to Roseburg, Ore., a distance of 484 miles, a rate of 35c applied, while from Los Angeles, Cal., to Tucson, Ariz., a distance of 502 miles, the rate was 76½, though so far as grades, curves and density of traffic were concerned, the advantage lay with Arizona. Local market competition is operative in both cases. From Springer, N. M., to Amarillo, Tex., the A. T. & S. F. Ry. published a commodity rate of 45c, while its class C rate was 83c. The rate on vegetables to El Paso, 1,098 miles, was 90c, as contrasted with rates of 93½c and 94½c, respectively, to Hayden and Winkleman, Ariz., for hauls of less than half the distance. Rates from Los Angeles and San Francisco to Leadville, Colo., on a 24,000 lb. minimum of 83c and 78c, respectively, were less than rates to certain Arizona points under a 26,000 lb. minimum, where the distances are approximately one-third of the Colorado distances. HELD, that the carriers have not justified the proposed change. Ratings contained in the suspended schedule must be canceled and the old ratings, namely, class C for carloads and fourth class for less than carloads, or equivalent commodity rates, be maintained. The various commodity rates established subsequent to the filing of the proposed schedule will be allowed to stand. Rates on Fruits and Vegetables, 30 I. C. C. 56.

(e) The Commission considered a proposed increase of 4c on malt shipped in carloads from Chicago, Ill., and points in Wisconsin and Missouri, to Texas common points. In Texas Brewing Co. v. A. T. & S. F.Ry. Co., 21 I. C. C. 171, the Commission had fixed the rate on malt by adding a differential of 5c to the rate on barley, equal to the differential of flour over wheat. Upon expiration of the Commission's order, carriers increased the rates on barley between the points in question by 4c, and thereafter filed the proposed rates on malt, advancing the rate by 4c over that fixed in the case cited. The rates on barley were "paper rates," there being no movement of barley to the points in question, and were made in contemplation of the proposed advance on malt. In 1909 the rate on barley between the points in question was the rate applicable to corn chops. This was reduced to the rate applicable to corn and oats, 2½c less than on corn chops, thus effecting a reduction of 2½c in the barley rates. Respondents contended that the rate on malt should not be less than the rate on flour. Malt is simply whole barley, germinated and swelled. Flour is a milled product. In value they rate about equally. Flour, however, is an article finished and ready for human consumption, while malt is merely one material used in producing an article of human consumption, i. e., beer. Malt loads more heavily than

flour, and this is reflected in the minimum carload weights. It is less subject than flour to loss and damage in transit, and is adapted to methods and facilities of transportation ordinarily furnished for whole grains. The total movement of malt to Texas is far less than the total of flour. HELD, that respondents have failed to justify the proposed rates. Cancellation directed. Malt Rates to Texas Points, 30 I. C. C. 385.

(f) The Commission considered the proposed rate of 33c on blackstrap molasses in carloads from New Orleans, La., to Knoxville, Tenn. This is the present rate on all other molasses and syrup, and prior to Nov. 9, 1912, was applied to blackstrap as well. Blackstrap contains less sugar than the higher grades of molasses, and is used largely in the manufacture of mixed feeds for animals and to some extent for human consumption. It is not worth more than 25 per cent of the highest grade of table molasses. Whether it can be distinguished from other grades, either by the ordinary observer or by an inspector, is disputed. Knoxville is the only point in southern territory where it is on a rate plane different from that of other sugar cane molasses. The proposed rate is part of a regular southeastern rate adjustment, which includes a carload rate of 28c from New Orleans to Atlanta, Rome, and Chattanooga; 30c to Augusta and Macon, Ga., and 32c to Bristol, Tenn. Knoxville, on shipments from New Orleans via the routes over which the increased rate applies, is intermediate to Bristol. HELD, that for the transportation of blackstrap molasses in carloads from New Orleans to Knoxville, a rate should be published not in excess of the present rate on all other grades of molasses, and not in violation of the long-and-short-haul clause of section 4. Molasses Rates to Knoxville, Tenn., 30 I. C. C. 613.

(g) The Commission considered proposed increases in rates on grain products from Omaha, Nebr., to local stations on the I. C. R. R., and Y. & M. V. R. R. in the Mississippi Valley. Rates from Omaha on grain and grain products had been maintained on a parity, while from Kansas City to these destinations rates on grain products were made on the lowest combination. It was proposed to make the through rate from Omaha equal to the lowest combination. resulting in a spread of from 1 1-2 to 4c between grain and grain-products rates, increasing the spread in the rates to intermediate points over those to more distant points. Where the combination was based on points other than St. Louis, the rates from Omaha would be 1c above those from Kansas City. From Omaha, to Hazelhurst, Brookhave, and McComb, Miss., and Hammond, La., rates of 33 1-2, 29 1-2, 33 1-2, and 31c were proposed for distances of 972, 992, 1016, and 1069 miles, as compared with rates on shipments from Omaha to Atlanta, Ga., Birmingham, Ala., Macon, Ga., and Columbus, Ga., of 35, 33, 37, and 37c for distances of 1021, 889, 1109, and 1046 miles. HELD that respondents had justified the increases in the rates on grain products from Omaha to the destinations involved south of Montgomery, Miss., but had not justified increases to stations north of Elton, Miss., nor the full increases proposed to stations from Elton to Montgomery. Proportional Rates on Grain Products from Omaha, 33 I. C. C. 621.

(h) The Commission considered proposed increased rates on cotton piece goods and woolen piece goods from North Adams, Mass., and other points on the B. & M. and B. & A. railroads to New York and Brooklyn, N. Y., and New York delivery points. Existing rates to New York on both commodities were as follows: 13c per 100 lbs., from zone 1, embracing points in Central Massachusets; 15c from zone 2, extending from Worcester, Mass., to Hookset, N. H., and from Boston and Salem Mass., to Greenfield, Mass., 16c from zone 3, including points north of zone 2. From North Adams and nearby points the rate was the same as from zone 1. Increases of 4c on cotton piece goods and 7c on woolen piece goods were proposed. This would result in a rate of 17c on cotton piece goods from North Adams to New York, distant 196 miles, as compared with a rate of 23c from North Adams to Boston, distant 142 miles. And these goods were rated rule 25, official classification, under which rule the rate from North Adams to New York was 20c. The local rate from North Adams to Troy, 48 miles, was 13c. Woolen piece goods were more valuable than cotton piece goods. HELD, that respondents had justified the proposed rates. Order of Suspension vacated. Rates on Cotton Piece Goods; 34 I. C. C., 41.

§5. (4) Unreasonably Low Prior Rate.

(a) Carrier not justified in increasing rate claimed to be unduly low which it established under compulsion of competitive conditions. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 557.

(b) Where rates are not established as just and reasonable rates, but rather under the compulsion of competitive conditions, it is no justification to a proposed increase in rates that even as increased they are still unduly low. Grain Rates in Central Freight Assn. Territory, 28 I. C. C. 549, 557.

(c) The Commission considered the proposed cancellation of the Official Classification rate of 85 per cent of sixth class, on shipments of soda ash, caustic soda and bicarbonate of soda, from Wyandotte, Mich., a suburb of Detroit, to Toronto, Hamilton and London, Ontario. In 1908 the Canadian rates were made the same as those on the American side; that is, 85 per cent of fifth class, producing a rate of 8½c to most of the destinations in controversy and 9c to Toronto. The effect of the cancellation would be to apply the classification in force in Official Classification Territory, viz.: sixth class on soda ash and caustic soda, in carloads, and fifth class on bicarbonate of soda, thus increasing the rate on the latter. Wyandotte is on the Detroit River, and the only movement of these commodities on American soil is that to and upon the river, the bulk of the movement being in Canadian territory and subject to the jurisdiction of its commission. Protestants encountered active competition with English soda at the points of destination, the rate from Montreal being about the same as the rate they had previously enjoyed from Wyandotte. The Canadian lines insisted, however, that under their classification the rates on these commodities were higher than under the Official Classification, having been, since 1908, increased to the sixth-class basis. HELD, that the carriers have not justified the proposed increases, but may apply for a modification of the holding if the action of the Canadian Commission renders it necessary, or a Canadian line refuses to participate in the rates. Rates on Soda Ash and Other Commodities, 28 I. C. C. 613.

(d) It is the Commission's custom to suspend new rates when it appears from protest or check of the tariffs that they will create unlawful discrimination Some tariffs providing for reduced rates to many points and not publishing a single increased rate have been suspended solely upon the ground of discrimination. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 420.

(dd) While the burden of proof attaching to a carrier who increases a rate under ordinary conditio-s is not cast upon a carrier who merely restores a rate which has been reduced through mere inadvertence, it is not relieved from the burden where in providing for the cancellation of a rate resulting from clerical error the effect of the cancellation is not to restore the status quo but to apply a rate materially higher. Cement Rates from Mason City, Iowa, 30 I. C. C. 426, 428.

(e) The Commission considered proposed increase in rates on lumber from Northern California to El Paso and points in Arizona, Nevada, New Mexico and Texas north thereof, and restricting the routing to the Ogden, Utah, route in certain cases. These tariffs increased the charges to El Paso and adjacent territory from $8.00 to $10.00 per ton. The rate from points north of Santa Barbara and Mojave, Cal., to El Paso was originally $10.00 and was reduced to $8 to avoid a violation of the fourth section, a rate of $8 being applicable from Northern California to Colorado, common points through the Deming or El Paso gateways. When this rate was canceled the $10 rate was restored. This rate applied both from Portland and San Francisco, respectively 1,937 and 1,283 miles from El Paso. The rate from San Francisco was carried back to Vail, Ariz., 990 miles from San Francisco and 1,644 miles from Portland. But the $10 rate from Portland applied as far west as Yuma, so that between Vail and Yuma San Francisco has an advantage of from 40c to $1.40. The $10 rate applied from San Francisco to points on the E. P. & S. W. north to Dawson, N. Mex., and to stations on the N. M. C. and St. L., R. M. & P. Rys.; but no through rates were published from Portland. The Commission has established rates in other parts of this Western territory yielding from 8 to 14 mills per ton-mile, while those under consideration yielded but from 6 to 10 mills. The Ogden route was the natural route to Colorado common points, the distance being less than through El Paso, and

the El Paso and Deming routes were not utilized by shippers over the S. P. Ry. to Colorado destinations. HELD, that respondents have justified the increase of rates in question. As the Southern Pacific rates have already become effective, no order will be made as to that carrier; but as the A., T. & S. F. are still under suspension, an order of vacation will be issued. California-Colorado Lumber Rates, 30 I. C. C. 461.

(f) There is no justification for increasing rates which have been long established and are remunerative, simply to remove a discrimination caused by advancing rates at competitive points. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 520.

(g) That money has been invested on the strength of a given rate does not preclude the increase of such rate if it is unreasonably low. Lumber Rates from Local Points to Chattanooga, 29 I. C. C. 646, 647.

(h) Rate war caused reduction between Kansas oil field and New Orleans, La., prior rate restored and held reasonable. National Petroleum Asso. v. A. T. & S. F. Ry. Co., Unrep., Op. A405.

(i) Commission is without authority to suspend a rate after it has become effective. Lower rates had become effective but the carrier through which they had been suspended, collected charges on the basis of the former and higher rate. HELD, reparation should be awarded upon the basis of the published and lower rate. Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op A481.

(j) The Commission considered proposed increases in rates on lumber and other forest products from points on the M. C. R. R. to points on the line of the B. & M. R. R. The financial condition of respondent railways was bad, the percentage of operating expenses to operating revenues having increased from 70.43 to 74.16 per cent during the current year. From Machias, Wiscasset and Old Town, Me., to Boston, Mass., the existing rates were 12c, 10½c and 11c, and the proposed rates of 13c, 12 and 12c for distances of 333, 157 and 257 miles; while from Vanceboro, Ellsworth and Brownfield, Me., to Springfield, Mass., the existing rates were 12c, 11½c and 10c, and the proposed rates 14c, 14c and 12c, for distances of 456, 372 and 248 miles. HELD, That the proposed increases had been justified. New England Lumber Rates, 31 I. C. C., 553.

(k) The Commission considered proposed increases in the rates on hides from New Mexico and Arizona points to Los Angeles, Cal. Existing rates were 80c from Lordsburg, N. M., and Phoenix, Ariz., and points west, and $1 from points east of Lordsburg to El Paso, Tex., and from points between Benson and Nogales, Ariz., which rates it was proposed to raise to $1.20. Rates from points of origin to El Paso and Phoenix, other hide concentrating points, were higher than to Los Angeles. Rates from Deming, N. M., Bowie, Tucson and Phoenix, Ariz., to Los Angeles, were $1, 80c, 80c and 80c, for distances of 726, 617, 502 and 452 miles; and to El Paso $0.54, $1.10, $1.53 and $1.65 for 88, 198, 312 and 434 miles. The carload rate Los Angeles to Chicago, 2,263 miles, and St. Louis, 2,084 miles, was $1.30; from El Paso, for 1,402 and 1,186 miles, respectively, 85c and 78c. Water competition had reduced rates to eastern markets below the first class rate applicable on dry hides by Western Classification. Empty car movement in that territory was eastbound. HELD, that the proposed increased rates were justified. Order of suspension vacated. Hide Rates to Los Angeles, Cal., 31 I. C. C. 633.

(l) The Commission considered a proposed increase of from 37c to 40c in the rate on fencing and fencing material, from Anderson, Crawfordsville, Kokomo, Muncie and Richmond, Ind., to Texarkana, Ark.-Tex. The usual method of making rates from Chicago-Cincinnati territory to Texarkana is by adding a differential of 7c, but through error the carrier had published a 4c differential from the point mentioned. HELD, that no substantial reason exists for charging a lower rate on shipments of fencing material from the points named than is charged on similar shipments from other points in Chicago-Cincinnati territory. Rates on Fencing and Fencing Material, 30 I. C. C. 650.

(m) The Commission investigated proposed increased rates on green coffee in double sacks from New Orleans of 44c from 35c, Mobile, 39c from 30c, and Pensacola, 35c from 26c, to Jacksonville, Fla. and points grouped therewith. The increased rates resulted from the substitution of the fifth class rate in lieu of commodity rates. The rates from Mo-

bile and Pensacola were paper rates, no traffic moving under them, but bore a fixed relation to the New Orleans rate; the New Orleans rate was therefore considered. The 35c commodity rate to New Orleans, which was the equivalent of the sixth class rate, was established in 1902, the rate prior to that time being the fifth class rate of 44c, to meet water competition, the ocean rate on coffee from New York to Jacksonville being at that time 18c, subsequently advanced to 22c. The advantage of 13c enjoyed by New York makes it practically impossible for New Orleans to compete for the Florida business. Coffee from New Orleans to practically all points in the southeast moves at the fifth class rate, except where competitive conditions necessitate the use of commodity rates, but even in these cases the proposed rate, by comparison, was shown to be relatively low. In Fourth Section Violations in the Southeast, 30 I. C. C., 153, the Commission found that the rates from New Orleans to Jacksonville were below the level of rates for like constructive distances to competitive and non-competitive points in southeastern territory. HELD, the carriers have justified the proposed increase. Rates on Coffee, I. & S. Docket No. 413, 32 I. C. C., 90.

(n) The Commission investigated an increase from fourth class to third class in the rating on live poultry, C. L., in Western Trunk Line and Trans-Missouri territories. For many years this commodity had been rated second class in the Western Classification, but under exceptions moved at fourth class. The movement was principally to eastern points. The carload minimum was 20,000 lbs. but the average loading does not exceed 17,500 lbs. Live poultry is sold to some extent in competition with dressed poultry and fresh meats, the principal markets being Boston, New York and other large eastern cities. The traffic moves almost exclusively in specially equipped cars made of steel, with room for a caretaker. The cars cannot be used for any other kind of traffic. The food for shipments from points of origin to Chicago weighs about 1,500 lbs., shipments to the east requiring about twice that much. No charge is made for the transportation of this food or of the caretaker. The cars are furnished by the shippers, who obtain them under rentals from the owners. The carriers pay for the use of the cars ¾c per mile each way. It is claimed that a greater volume of damage claims accrues on this than on any other traffic of similar volume. The record indicates that claims for damage to the traffic and injuries to caretakers collectively amount to about 2 per cent of the revenues. On dressed poultry the average weight per car is about the same as on live poultry. On the former the average earnings per car for a distance of 301.7 miles were $69.82; on the latter, for an average distance of 342.5 miles, $62.85. The average earnings per car mile on dressed poultry were 23.14c and on live poultry 18.34c. Under the proposed increase, the earnings on live poultry would be 23.7c, or about the same as on dressed poultry. If the proposed ratings had been in effect during the period ending June 30, 1913, the comparative earnings per car mile on various analogous commodities on the C. & N. W. Ry. lines would have been as follows: live poultry, 21.63c; eggs, 21.11c; butter and cheese, 21.22c; all carload freight, 18.04c. HELD, in view of the fact that the movement of live poultry is relatively light; that it requires special equipment which cannot be used for other traffic; that the loading is relatively light; it is not believed that the earnings under the rates that would result from the proposed increases would bear an unfair relation to the earnings which accrue from other traffic the transportation of which is comparable with that of live poultry; and respondents have justified the proposed increased ratings. Rates on Poultry in Western Trunk Line Territory, 32 I. C. C., 380.

(o) While right to demand a higher rate may be denied when existing charge is reasonable, even though carrier may be in need of additional earnings, so carrier may be entitled to a higher rate for a particular service because existing rate is unreasonably low, although not in need of additional revenue. The Five Per Cent Case, 31, I. C. C., 351, 358.

(p) Gypsum from Winslow, Ariz., to Los Angeles, Cal., has to be moved in equipment that must be returned empty. Advance in rates justified. Gypsum Rates from Winslow, Ariz., Unrep. Op. A-754.

(q) The Commission considered proposed increases in rates, approximately 7 1-2c, on grain and grain products from points on the M. & St. L. R. R. in Iowa and Minnesota to points on the C. R. I. & P. Ry. in the southwest. The increase would arise from cancelling through rates, established at a time be-

fore the lines of the C. R. I. & P. Ry., were extended to St. Paul and Minneapolis, Minn. Joint rates were composed of a proportional of 11c from point of origin to Kansas City or Omaha, and a local of 14 1-2c beyond. Rates from Montgomery, Minn., and Britt, Iowa, to Milwaukee, Wis., distances of 351 and 328 miles were 15 and 14 1-2c respectively. Ton-mile earnings under the through and combination rates from points of origin to El Reno, Okla., average distance 763 miles, were 6.5 and 8.5 mills, respectively, as compared with average ton-mile earnings of 8.8 mills on all traffic on the C. R. I. & P. Ry. and 8 mills on all traffic over the M. & St. L. R. R. Through rates would continue over the C. R. I. & P. Ry. HELD that respondents had justified the proposed increases. Order of Suspension vacated. Rates on Grain and Grain Products, 33 I. C. C., 374.

§5. (6) Erroneous Prior Rate.

See Erroneous Rate.

(a) The Commission considered rates on cement from Mason City, Iowa, to various points in Minnesota and North Dakota. Cement shipments from Mason City moved via the C. M. & St. P. Ry. to St. Paul, Minn., and thence via these destinations are reached by shorter lines. At such junction points the N. P. Ry. formerly met the short-line rates, maintaining higher rates to intermediate points. In 1913 the C. M. & St. P. Ry. issued a supplement to its cement tariff which inadvertently reduced rates to such intermediate points to the level of the junction-point rates. Observing the mistake the carriers then issued supplements cancelling joint through rates to most of the points, though apparently leaving in effect joint through rates to Detroit, Minn., and Edgeley and Linton, N. D. The effect of the cancellations materially increased rates to a number of points, since the tariffs cancelling the joint through rates provided for the application of class rates. For example, the joint rate to Moorehead, Minn., was 17c. The combination of commodity rates based on St. Paul was 18½c. But the suspended supplement would result in the application of the through-class rate of 28c. To Sidney, N. D., the cement rate was 25c and the combination on St. Paul 26c; but under the suspended tariff the through-class rate of 40½c would be applicable. Thus the effect of the suspended tariff was to establish rates via St. Paul exceeding the aggregate of intermediate rates based on that point. As illustrating the reductions made by the tariff applying junction-point rates to intermediate points: The direct line from Mason City to Linton is about 4/5 of the distance over the joint route of respondents (607 miles). The through rate by the joint route was 23c; but rates via the joint route to some points on the U. P. Ry. east of Linton have been just under 30c. The intermediate application of the 23c rate would reduce to this level rates at intermediate points for 200 miles east of Linton. HELD, that the equities of the situation demand a resumption of the status quo as it was under the old rates, and a hearing upon the reasonableness of these rates. Cement Rates from Mason City, Iowa, 30 I. C. C. 426.

(b) Error in adjustment of rates no justification for proposed increase. Wheat Rates from Oklahoma, 30 I. C. C., 93, 95.

(c) Reduction of the rate on strawberries from Florin, Cal., to Helena, Mont., due to error, and subsequent increase justified. Lindsay & Co., Ltd., v. Wells Fargo & Co., Unrep. Op. A-755.

(d) The fact that a previously existing rate was published through error may be considered in passing upon an advance. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247.

(e) Excuse of error lacks sufficiency as justification for action in proposing to justify it by increasing rates. Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points, Unrep. Op. A-912.

§5. (7) Expense of Competition.

(a) Carriers are not justified in increasing rate claimed to be unduly low which is established under compulsion of competitive conditions. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 557.

§5. (7¼) Low State Rate.

(a) Advance in interstate rates to prevent state commission reducing intrastate rates not justified. Coal Rates to Dewey, Okla., 30 I. C. C., 115, 116.

(b) The Commission considered proposed increases in the class rates between Duluth, Minn., and related points

and St. Paul and Minneapolis, Minn., (the "twin cities") and related points, and also proposed increased commodity rates between the same points. Theretofore Duluth and Superior had taken the same rates. Between Duluth and the twin cities the N. P. Ry. was wholly intrastate, the lines of the other respondents interstate. Respondents sought to raise their interstate rates to the intrastate rate level prescribed by the Minnesota statute. The ensuing class rates and proposed increases were:

Class	1	2	3	4	5	A	B	C	D	E
Present rate	35	30	23	17	10	14	12	10	9	8
Increase	6.4	4.5	4.6	3.7	6.6	4.6	2.5	2.4	1.3	.3

The proposed increases would result in a relatively greater increase in rates for articles in the fifth class than for those otherwise rated, but the percentage relation would be practically that prescribed in the Iowa State Board of R. R. Commissioner's v. A. E. R. R. Co., 28 I. C. C., 563. The proposed rates were lower than intrastate rates of certain carriers in Wisconsin, South Dakota and Nebraska. Existing commodity rates on lumber, poles and posts from Duluth and Superior, and from Cloquet, Minn., to the twin cities were 7c and 5.5c, respectively, and the proposed rates 7.8c and 7.5c, for average distances of 155 and 170 miles. On news print paper existing rates from Cloquet and Grand Rapids, Minn. to the twin cities were 7c and 8c and proposed rates 8.2c and 10.4c, yielding 8.6 and 9.6 mills per ton-mile for average distances of 170 and 241 miles; as compared with ton-mile earnings of 16.1, 10.6, and 7.3 mills from Eau Claire, Ladysmith and Rhinelander, Wis., to the twin cities, for distances of 87, 132 and 218 miles. Existing and proposed rates on cement from Duluth to the Twin Cities were 5c and 8c, respectively, yielding 6.4 mills and 1c, respectively, for 155 miles. Existing rates on lime were 6c and 4.5c, based on C. L. minimum of 24,000 and 40,000 lbs. respectively; proposed rates 8c and 6c. The existing rate on plaster was 6c and the proposed rate 8c. minimum 30,000 lbs. The existing rate on salt, C. L., via both the G. N. Ry. and the N. P. Ry., was 5c. The latter alone proposed an increase to 10.3c. HELD, that the proposed class rates were justified and the proposed commodity rates, except as to cement and lime and plaster, which were not justified, and except in so far as violations of the long-and-short haul clause might result. Freight Rates from Minnesota Points, 32 I. C. C., 361

(c) It cannot be said, merely because a higher intrastate rate exists, that an increase of an interstate rate to meet the state-made rate is justified, even though the transportation conditions as to distance and territory are similar. Freight Rates from Minnesota Points, 32 I. C. C., 361, 363. Rates on Beer and Other Malt Products, 31 I. C. C., 544, 545.

§5. (7½) Paper Rates.

See Evidence, §42¼.

(a) The fact that there is not and has not been for a considerable period any movement is not sufficient justification for the cancellation of the commodity rates, leaving higher rate in effect. Sandstone, Minn.-Missouri River Building Stone Rates, 28 I. C. C. 269, 271.

(b) Statement that nothing will be offered for transportation under increased rates cannot be accepted as a justification. California-Nevada Lumber Rates, 28 I. C. C. 313, 315.

(c) The Commission considered the withdrawal of commodity rates on high explosives from St. Louis, Mo., and related points to Philadelphia, Pa. New York, N. Y., Boston, Mass., and points taking the same rates, as well as to certain Canadian points proposed in joint tariff supplements issued by agents Cameron and Hosmer. While there was no rating on high explosives in Official Classification, a rating was provided in the exceptions thereto published by agent Morris. Many of the lines for whom agents Cameron and Hosmer issued not being parties to Morris' exceptions, special commodity rates, equivalent to the class rates which would have applied under the latter's exceptions, were published by Cameron and Hosmer to the destinations mentioned. In the interest of simplicity and economy it was finally decided to eliminate the commodity rates, merely referring to the exceptions to the classification. No increase in rates was contemplated; but, through an oversight, as to carriers parties to agents Cameron and Hosmer's tariff which were not parties to Morris' exceptions, traffic would become subject to a combination of rates representing substantial increases. This was particularly true of Boston, but it did not appear whether there was any movements of high explosives to Boston or points taking the same rates. HELD, that the Commission should not be expected in every case to check supersed-

ing issues of all tariffs to determine whether, by any possible construction, a rate may be increased via a possible route over which there may never have been any movement. Proceding discontinued. New England and Canadian High Explosive Rates, 29 I. C. C. 697.

§5 (8) To Prefer Particular Locality. See Origin of Traffic.

(a) The Commission considered proposed advanced rates on strawboard chipboard and boxboard, in carloads, from Wilmington, Ill., to Chicago group points and Milwaukee. The existing rate to Chicago was 4½c, and to Chicago group points, including Hammond and Gary, Ind., 5c; to Milwaukee, 6½c, and to group points, including such points as Racine, 8½c. It was proposed to raise the rate to Chicago group points to 6½c, and the rates to Milwaukee to the Milwaukee group basis of 8½c. The commodities affected are made from waste paper or from straw or pulpwood, which are used in the manufacture of paper, minimum weight applicable, 40,000 lbs. Respondent contended that it was proposed to increase the rate to Milwaukee because shipments to Milwaukee passed through Racine; and that the rate from Marseilles Ill., where some of protestant's active competitors were located, had been increased to the basis of the rate proposed. Marseilles and Wilmington are respectively 77 and 52 miles from Chicago, and the distance from Wilmington to Milwaukee is 137 miles. From Otsego Mich., another competitive point, to Chicago and Milwaukee, the rates were 7½c and 9c for distances of 173 and 258 miles. To Milwaukee from Childsdale, Mich., the rate was 8c for 391 miles; from Kalamazoo, Mich., 9c for 226 miles; from Grand Rapids, Mich., 8c for 263 miles; from Kokomo, Ind., 8c for 225 miles; from Elkhart, Ind., 8c for 186 miles; from Lafayette, Ind., 8c for 205 miles; from Aurora, Ill., 6½c for 115 miles; from Peoria and Pekin, Ill., 8½c for 240 miles, from Rock Falls, Ill., 7.35c for 198 miles; and from Rockford, Ill., 6½c for 100 miles. The readjustment proposed changes, to its disadvantage, the relation which Wilmington has in the past borne to competitive points in Illinois. HELD, that the carriers have not justified the proposed tariffs. Advance denied. Boxboard Rates from Wilmington, Ill., 29 I. C. C. 694.

(b) The Commission considered proposed tariffs of the C. R. I. & P. R. R. and St. L. & S. F. R. R. increasing the rates on wheat and grain products taking the same rates, approximating 2½c per 100 lbs. from Oklahoma points west of Oklahoma City to Memphis, Tenn., and points taking the same rate. Oklahoma wheat moved to Memphis under a 20c blanket rate, and it was proposed to increase the rates west of Oklahoma City to 22½c, leaving the rates from the remainder of the state practically undisturbed. The C. R. I. & P. Ry. is the short line to Memphis by about 100 miles. When it first operated from Oklahoma to Memphis it established a 17c rate on flour, subsequently raised to 25c. Upon complaint it was agreed the rate was too high and the blanket rate of 20c was established. The rate from Oklahoma City to St. Louis, Mo., via the St. L. & S. F. Ry., on grain products was 24½c, yielding 9 mills per ton mile, for 542 miles, as compared with the rate of 20c on shipments from Oklahoma City to Memphis, distance 487 miles. Early wheat shipments from Oklahoma to St. Louis, had ceased since the rate to Memphis had been reduced to 20c, and the purpose of the proposed increase was to restore the former relation. Memphis being the only practicable gateway through which Oklahoma could ship its surplus product, an increase in the rate to that point would curtail the business of Oklahoma flour mills. Traffic had moved on the 20c rate for more than five years, and no proof that the rate was unreasonably low was presented, argument being directed merely to an equalization of the St. Louis and Memphis rates. From Oklahoma City to St. Louis via the C. R. I. & P. R. R. is 706 miles and the revenue per ton mile 6.9 mills, much lower than the rate of 8.3 mills per-ton-mile, received on traffic moving to Memphis. The average short line distance from 37 points in Oklahoma to Memphis was 555 miles, the average rate 20.7c, yielding 7.5 mills per ton mile, while proposed increases would yield 8.3 mills; the average from 33 Kansas points to Memphis was 534 miles, the average rate 21.3c, yielding 8 mills per ton mile. In 1912 the average haul of the C. R. I. & P. R. R. on interstate grain was 169 miles, yielding 5.9 mills per ton mile; average haul on flour 301 miles, yielding 5.8 mills per ton mile. The average distance to Memphis from 22 representative Oklahoma points on

the C. R. I. & P. R. R. was 570 miles, yielding 7.2 mills per ton mile. HELD, that respondent's endeavor against St. Louis did not justify an increase in the rates to Memphis. Wheat Rates from Oklahoma, 30 I. C. C. 93.

(c) The Commission considered proposed rates on packing-house products and fresh meats from Mason City, Ia.; and Austin and St. Paul, Minn., to Texas and Arkansas points. It was proposed to increase the rate on cured and salt meats from 44½ to 50c from Mason City to Little Rock, and from 69½ to 75c on shipments from Mason City, Austin, and South St. Paul to Ft. Worth, Houston and San Antonio, Tex. The points of origin were originally in the Fox River group. In 1912 Mason City was taken out of the group and given a rate only 2½c higher than the rate from Marshalltown, Ia., which was made by adding 7c to the rates from St. Louis and Kansas City. Rates from Austin and South St. Paul were reduced to the Mason City basis. Defendants contended that the increase was necessary to prevent disintegration of the entire Fox River group. The proposed rates would increase the differential over St. Louis from points of origin in question from 9½ to 15c. St. Louis is 440 miles from Mason City and 593 miles from South St. Paul, the most northern and southern points in the Fox River group. Austin is about midway between these points. To St. Louis from Cedar Rapids, Marshalltown, Waterloo, and Fort Dodge is respectively, 320, 352, 372, and 429 miles. All take the 7c differential over St. Louis. HELD, that respondents have not justified the rates under suspension and must maintain existing rates as maxima. Rates on Packing House Products, etc., from Mason City, etc., 30 I. C. C. 341.

(d) The Commission considered a proposed increase of from 7½c to 8½c in the rate on ex-lake grain from Buffalo, N. Y., to Pittsburgh, Pa., and points taking the same rates. Rates from Buffalo, N. Y., Erie and Fairport, Pa., and Cleveland, Sandusky, and Toledo, O., to Pittsburgh were, respectively, 7½, 7½, 7½, 7½, 8½, and 8½c, for distances of 234, 146, 140, 132, 192 and 237 miles. Prior to 1910 rates from all the ports to Pittsburgh were on a lower basis. In 1910 rates from all the ports except Buffalo were made 86 2/3 per cent of sixth class, leaving rates from Buffalo out of line with other points equi-distant from Pittsburgh. But there is no movement of grain to Pittsburgh, grain from Buffalo being shipped, not to Pittsburgh, but to Pittsburgh group points where flour mills are located. About 500,000 bushels are shipped yearly from Buffalo to these points. Among these points, Dubois, Big Run, Savan, East Brady and Butler yield, respectively, 9.43, 8.62, 7.73, 7.42 and 6.15 mills per ton mile for distances of 159, 174, 194, 202 and 242 miles. The average distance to 13 points is 204 miles and the average revenue 7.51 mills per ton-mile. Competition at these points is not with grain shipped from Lake Erie ports but with grain shipped all-rail from Chicago. The rate from Chicago to some of these points is 10c, to others, 13c. The existing rate from Buffalo was 75 per cent of sixth class rate, and that from Chicago 66⅔ per cent of sixth class. HELD, that respondents have not justified the proposed increases in rates on ex-lake grain from Buffalo to Pittsburgh and points taking the same rates. Advance denied. Grain Rates to Pittsburgh, Pa., 30 I. C. C. 382.

(e) The Commission considered a tariff providing for joint rates on bituminous coal from Oak Hills, Colo., a point on the D. & S. L. R. R. to points on the C. R. I. & P. Ry. Shipments were formerly made on combination rates based on Denver. In Aug., 1913, joint rates were provided for and in Nov., 1913, the suspended tariff was issued increasing such joint rates on slack and mine run. In 1906 the C. R. I. & P. published proportional rates from Denver on lignite coal originating at certain Northern Colorado points, which in 1909 were made applicable to the movement of bituminous coal, mine run and slack originating at Oak Hills. In establishing the present joint rates, the D. & S. L. R. R. used these proportionals as divisions to be allowed the C. R. I. & P. R. R. out of the rates on mine run and slack, allowing on lump and nut coal a higher division, viz: the per-ton-mile revenue from Pueblo on bituminous coal from the Walsenburg district to the same destinations. The present rates on slack and mine run from Oak Hills to Atchison and Leavenworth, Kan., and to St. Joseph and Kansas City, Mo., were respectively $4.05, $4.05, $4.05 and $3.97; proposed rates on nut or slack, $3.95 to all four destinations, and on other coal $4.16, $4.16, $4.16 and $4.07, respectively. Rates from Walsenburg to the same des-

tinations on nut and slack were, respectively, $3.50, $3.50, $3.50 and $3.75; and on other coal $3.75 to all four points. The D. & S. L. in connection with the U. P. and the C. B. & Q. applied the Walsenburg basis of rates from Oak Hills to destination territory parallel to that of the C. R. I. & P. The latter line applied and proposed to continue Walsenburg rates to 4 Colorado points immediately east of Limon, Colo., the point where Oak Hills coal and Walsenburg coal meet on the way east. The distance to the Rock Island destinations indicated was greater from Oak Hills than from Walsenburg, but coal from these points was competitive in this destination territory. HELD, that the proposed rates were not justified. If Walsenburg rates can be voluntarily applied by the C. R. I. & P. from Oak Hills to any point east of Limon there is no good reason why they should not be applied to all points involved east of Limon. The proposed rates should be cancelled and Walsenburg rates established in lieu of existing rates. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505.

(f) The Commission considered proposed increases in the class and commodity rates from Quincy, Ill., Hannibal and Louisiana, Mo., and points taking the same rates, to points in trunk line and Central Freight Association territory. The increases proposed on eastbound freight from the named points to New York were 2.5c, 2c, 1.5c, 1c, 1c, and 1c on the first six classes and 2c, 2c, 1c, 1c, 1c, and 1c westbound; and the effect of the proposed schedules would be to take these points out of the St. Louis group and establish to them the rates to the upper Mississippi River crossings. Dubuque, Burlington, Hannibal, and Louisiana were respectively 1,079; 1,102; 1,118; and 1,444 miles from New York or 101.3; 103.5; 105 and 107.4 per cent of the distance between St. Louis, Mo., and New York. The average distances of Cincinnati, Ohio, and Indianapolis, Ind., from the upper crossings were 442 and 324 miles; from the three mentioned points 423 and 296 miles; from St. Louis, 341 and 240 miles. St. Louis was the only crossing to which there was a one-line haul from trunk-line territory. The competition of merchants and manufacturers at the three complaining points was almost wholly with St. Louis, both as to raw material from points east and east bound shipments of products; they met but slight competition at the upper river crossings. HELD, (1) that respondents have not justified the maintenance of higher rates between Quincy, Hannibal and Louisiana and points in trunk-line and Central Freight Association territory than are maintained between St. Louis, and the same territories; (2) that the difference in distance to and from St. Louis, on the one hand, and the three protesting cities on the other, may be disregarded, especially as they have been long grouped with St. Louis; (3) the proposed increases would benefit St. Louis alone, and be detrimental to the upper crossings. Suspended tariffs canceled. Class and Commodity Rates to and From Quincy, Ill., 32 I. C. C., 471.

§6. Right to Earn.

See Evidence §6.

(6) All Traffic Will Bear.

(a) Evidence that an existing rate is so high that no shipments move thereunder, does not show that a proposed increased rate is just and reasonable. Cement Rates From Points in Illinois, 32 I. C. C., 369, 374.

(b) Carriers have a right to earn all they can on the business which they can secure at just and reasonable rates. The right of the shipper to protection against the exaction of rates unreasonably high for the service performed is equally sacred. Upon our order of suspension and investigation of these rates, in my view, there is but one question lawfully before us for ultimate determination, and that is, are they "just and reasonable." Upon this question the burden of proof is placed upon the carriers by the statute. Have they met the issue and discharged this burden? If they have done so, they are of right clearly entitled to have them go into effect. If they have not, it is with equal clearness the duty of the Commission under the law to prevent their establishment. The Five Per Cent Case (Diss. Op.), 32 I. C. C., 325, 336, 337.

III. EVIDENCE.

§7. Change In Conditions.

See Evidence, §9.

(13) In General.

(a) Protestant complained of the proposed increase in rates by substituting Class B rates for commodity rates on emigrant movables from St. Paul and Duluth, Minn.; Chicago, Ill.; Omaha, Neb.; Kansas City and St. Louis, Mo., to points in

the counties of Codington, Hamlin, Kingsbury, Brookings, Lake and Minnehaha in eastern South Dakota as both unreasonable and discriminatory. The original rates had been made more than 20 years before on a very low basis to induce emigration, with a view of developing the country; but at the time of the hearing, emigration to eastern South Dakota had practically ceased, 83 per cent of the land having been brought under cultivation, and the value of farm land having nearly trebled from 1900 to 1910, rising from $19.87 to $56.88. The average population per square mile had advanced to 21, and emigration from the points of origination moved on to western South Dakota before settling, on which traffic the original rates were left undisturbed. The proposed rates were higher than corresponding rates to points in eastern Nebraska. HELD, that the rates to South Dakota were not in themselves unreasonable, while to eastern Nebraska, rates were unduly discriminatory. The carriers having offered to maintain rates to South Dakota not exceeding 32½c from St. Louis, 30c from Kansas City and Omaha, 27c from Duluth, and 15c from St. Paul, it was ordered that the carriers make readjustments accordingly; and that rates be so adjusted as to remove the preference in favor of eastern Nebraska. Emigrant Movables to South Dakota, 29 I. C. C. 40.

(b) Rebates ought to be eliminated before roads are permitted to make a general rate increase. Industrial Railways Case 29 I. C. C. 212, 218.

(c) The Commission will not view with favor any attempt to obtain an increase in net revenue through unduly restricted expenditures upon maintenance. Five Per Cent Case, 32 I. C. C. 325, 328.

(d) Clause of section 4 to the effect that proposed increased rates must rest upon "changed conditions" other than elimination of water competition, held not to apply to rates reduced prior to June 18, 1910. Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C., 54, 57.

§7. (2) Increased Operating Expenses.

See Reasonableness of Rates §9.

(a) The burden of proof is not satisfactorily discharged by the presentation of earnings per ton mile and suggestions of increased general operating expenses. Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287.

(b) The cost of betterments charged to operating expenses affords no justification for an increase in rates. New York Butter and Cheese Rates, 28 I. C. C. 330.

(c) General statement that cost of conducting terminals has increased and more revenue is needed. This kind of testimony furnishes no justification. It is susceptible of exact proof, and should be so presented. Detroit Switching Charges, 28 I. C. C. 494, 497.

(d) If an increase of rates is proposed to meet increasing operating expenses and tariffs filed accordingly, the Commission must adopt the remedy proposed if the increased new rates are just and reasonable and no other remedy is proposed, even though it may not seem the best remedy available. The Five Per Cent Rate Case, 31 I. C. C., 351, 386.

§7. (4) Cessation of Competition.

(a) The Commission considered proposed increases of from ½c to 2c per 100 lbs. on petroleum and its products, in carloads, from Emlenton, Pa., to Detroit and other Michigan points and to Milwaukee, Wis. Competition of short-line carriers at Oil City and Franklin, points in the more distant Buffalo group, had formerly compelled respondent to reduce its rates from that group below the Pittsburgh level, and Emlenton, 89 miles north of Pittsburgh and 44 miles south of Oil City, though not affected by such competition, had been included with the group; the proposed increase would apply Pittsburgh rates to Emlenton. HELD, that respondent is entitled to narrow the rate conditions adverse to Pittsburgh by extending the Pittsburgh rates to the point where the competitive forces cease to be felt. Order of suspension vacated. Emlenton Petroleum Rates, 29 I. C. C. 519.

(b) The Commission considered certain suspended tariffs increasing the class rates and certain commodity rates from New Orleans, Harvey, and Port Chalmette, La., to Brownsville, Tex. At the hearing respondents proposed to use the Houston combinations, in several instances lower than the suspended rates, as maxima. Brownsville, 740 miles from New Orleans, on the Rio Grande 20 miles west of its mouth, and served by the St.

L., B. & M. Ry., is in differential territory as distinguished from Texas Common-point territory. Common-point territory extends as far south on the St. L., B. & M. R. R. as Sinton, Tex., 578 miles. and Corpus Christi, Tex., 614 miles from New Orleans. Present rates from the three points named were 137, 115, 94, 87, 58, 61, 52, 48, 42 and 38c. the suspended rates 168, 145, 128, 122, 91, 94, 85, 66, 52 and 44c, and the rates proposed at the hearing 168, 145, 121, 108, 85, 90, 77, 66, 52 and 44c. Ordinarily New Orleans rates apply from a number of other Louisiana points which are contained in group A in the tariffs involved. Present rates from New Orleans, Harvey, and Port Chalmette to Brownsville were in many instances the same, in a few instances lower, and in others slightly higher than those to Texas common points. Rates from the other group A points were made by adding differentials to the rates to Texas Common points, and the suspended tariffs attempted to raise rates from the three-named points of origin to the basis in effect from the remainder of group A. Group A included points on the N. O. T. & M. west of New Orleans, thus resulting in fourth section violations. Thus, while the first-class rate from New Orleans to Brownsville was $1.37, it was $1.68 from DeQuincy, 232 miles west. The fourth section was also violated as to destinations, the first-class rate from New Orleans to Brownsville being $1.37, while to Olmita, Baneda, and San Benito, Tex., distant respectively 731, 726 and 721 miles from New Orleans, it was $1.68. The fifth-class rate from New Orleans to Brownsville was 58c and violated the fourth section as far back as Buckeye, Tex., 465 miles from New Orleans with a rate of 59c. The lower rates from New Orleans, Harvey and Port Chalmette were originally established to meet water competition; while the Rio Grande affords no feasible water route to Brownsville a rail-and-water route being formerly operated through Point Isabel Tex., via the S. P. Ry. to Galveston, the steamship Manteo to Point Isabel, and the R. G. Ry. hence to Brownsville. But at present no active water competition existed. The route from New Orleans to Brownsville was sparsely settled, the population of all stations on the route being 128.239, of which all but 29,079 lived within the cities of Houston, Baton Rouge, Beaumont and Brownsville. Three carriers, the N. O., T. & M., the B., S L. & W., and the St. L., B. & M., participated in the haul, the latter receiving 55 per cent of the rate on the haul from New Orleans and 63 per cent on the haul from points east of New Orleans. In 1913 the net operating revenue per mile of road for the three carriers was $1.034, or less than half of the average for lines in the southwest. Owing to the heavy tonnage of live stock, fruits and vegetables the empty-car mileage was heavy. Proposed rates to Brownsville yield approximately the same revenue per ton mile as those to San Antonio, 572 miles from New Orleans. St. Louis is 1,188 miles from Brownsville, and its rates are the regular Brownsville differentials over the rates from St. Louis to Texas common points, in all cases somewhat higher than rates from New Orleans. The proposed rate on sugar from New Orleans to Brownsville was 4c higher, on green coffee 7½c higher, and on roasted coffee 25c higher than present rates. Proposed rates on sugar and green coffee were in all cases lower, and on roasted coffee the same as the Houston combination. The first-class rate to Laredo, Eagle Pass and El Paso, all located on the Rio Grande, the first two equi-distant with Brownsville and the latter 1,160 miles from New Orleans, is $1.49, as compared with the present rate of $1.37 to Brownsville and the proposed rate of $1.68. Traffic is, however, denser on the lines leading to Laredo, Eagle Pass and El Paso than on the lines to Brownsville. HELD, that with the exception of the rate on roasted coffee the rates proposed by respondents at the hearing should be permitted to become effective. The rates on roasted coffee should not exceed those on green coffee by more than 5c per 100 pounds. Brownsville, Tex., Class and Commodity Rates. 30 I. C. C. 479.

(c) That proposed increased rates must rest upon "changed conditions" other than elimination of water competition held not to apply to rates reduced prior to June 18, 1910. Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

§7. (5) Competition in General.

See Competition.

(a) By suspended tariffs, carriers proposed to increase certain domestic rates on imported salts moving from north Atlantic ports to destinations in Central

Freight Assn. Territory by compelling the use of the rate to Chicago as the minimum as far east as Cincinnati. These salts formerly moved upon special import rates with the rate to Chicago observed as the minimum, as stated in the new tariffs, but Feb. 1, 1913, the import rates were canceled and superseded by domestic rates regularly scaled upon the established percentage basis. From New York and Baltimore to Chicago the domestic rates were 22c and 19c, respectively, on kainit and potash, and these rates were regularly scaled down to destinations east of Chicago, so that to Cincinnati, Indianapolis and Fort Wayne and to South Bend, Ind., the rates were 3c, 2c and 1c, respectively, below Chicago. The rate to Louisville, Ky., was the same as the Chicago rate. By tariffs effective July 1, 1913, carriers proposed to establish rates to points as far east as Cincinnati which would be equal to domestic rates to Chicago, which would increase rates to Cincinnati and similar points and deprive such points of rates based on the percentage principle. For many years kainit, muriate of potash and sulphate of potash moved from north Atlantic ports under import rates, and for about two years prior to Feb. 1, 1913, like rates were applied on all the articles named. During the latter period the rate from New York City to Chicago was 19c per 100 lbs. on all articles except the potashes, which moved under a rate of 21c. From 1907 to 1911 the import rates on kainit and the two potashes were several times increased. Prior to 1907 the rate from New York to Chicago on kainit appeared to have been 15c, and on the potashes 15c to 16c, and from Baltimore to Chicago, on kainit 10c to 12c, and on the potashes 10c to 13c per 100 lbs. The other salts for the greater part of the period mentioned were subject to class rates, and apparently for that reason, their movement was comparatively light. Substantially the entire movement was via Baltimore, Md., from which point to Chicago the rate was on the basis of the usual 3c differential under the New York rate. HELD, that while under the rate situation as it existed prior to Feb. 1, 1913, manufacturers of fertilizers at the destination points involved were able to compete upon a fair basis, something more than this is necessary to justify a further increase in rates which have already very materially increased in recent years. The relation in effect between the East and Central Freight Assn. Territory has been uniformly approved by the Commission, and the carriers not having met the burden of proof placed upon them by the statute, the advance is denied. Rates on Potash and Other Commodities, 29 I. C. C. 626.

(b) It is for the carrier to determine whether it will meet water competition. If it elects to discontinue such practice at any point and increase its rates, the Commission is concerned only with the question of whether or not the increased rates are just, reasonable and proper. Rates on Scrap Iron from Gulf Ports, 33 I. C. C., 668, 672.

§7. (6) Disputes Concerning Divisions. See Divisions §4.

(a) Mere failure to agree upon divisions of joint rates, when such rates are admitted to be reasonable, will not be accepted as justification for an increase. New Mexico Coal Rates, 28 I. C. C. 328, 329; Chicago Lighterage Charges, 28 I. C. C. 390, 392; Oklahoma Grain Rates, 28 I. C. C., 462,; Kansas City & M. Ry. Co. Rate Cancellation, 28 I. C. C. 640, 642.

(b) Protestant objected to a tariff providing for the cancellation of routes for the movement of lumber from points in Arkansas and other Southern and Southwestern points, via the St. L. I. M. & S. and St. L. & S. W. R. Rs., through the Cairo, Thebes and St. Louis gateways to destinations on the A. T. & S. F. Ry. in Illinois, and to Ft. Madison, Ia. Transportation via these lines involved a three-line haul north of the Ohio River, and the A. T. & S. F. Ry. contended that the division of rates in such cases did not give it a sufficiently remunerative proportion as the delivering line. The effect of the tariff was merely to cancel such routes in favor of the C. C. C. & St. L. and the I. C. R. Rs., involving only two-line hauls, on which the rates to the shipper remained as before. Protestant contended that the supply of empty equipment would be seriously diminished by the elimination of the St. Louis gateway. HELD, that no sufficient reason existed for presuming that the carriers composing the through routes would fail in their duty to furnish equipment. It appearing that the closing of the three-line routes would not operate to the disadvantage of shippers, the order of suspension was vacated. Lumber Rates Through Ohio River Crossings, 29 I. C. C. 38.

(c) Protestants complained of the joint rate of 45½c per ton, on crushed stone shipped from McCook, Ill., to Munster, Ind., a distance of 29 miles, as unreasonable. Respondent had originally fixed the rate at 45½c, which was subsequently reduced to 35½c to meet the rates of competing carriers. The terminal carrier demanding a division of 30c for the last three miles of the haul, respondent restored the rate to 45½c, to secure the 15½c division for which it contended. HELD, that respondent had not justified the proposed increase in the rate, though a division of 15½c to the terminal company was deemed reasonable. Ordered that respondents reduce the rate to 35½c. Rates on Crushed Stone from McCook and Thornton, Ill., 29 I. C. C. 136.

(d) Because carriers failed to agree on divisions of through rate, higher rate in effect via shorter distance route than via longer. HELD, unreasonable and reparation awarded. Dunbar-Hansen Co. v. S. P. Co., Unrep. Op. A234.

(e) Joint rates canceled because carriers failed to agree on divisions, leaving higher combination in effect. Joint rate subsequently restored. Carriers not having justified advances, reparation awarded. Pfister & Vogel Leather Co. v. B. & M. R. R. Co., Unrep. Op., A238.

(f) Cancellation of joint through rate, leaving higher aggregate of intermediate rates in effect, because carriers failed to agree on divisions, not justified. Reparation awarded. United States Gypsum Co. v. St. L. & S. F. R. R. Co., Unrep. Op., A310.

(g) The Commission considered proposed increased rates on lumber and other forest products from points in Arkansas and other states to points in Minnesota, Iowa and other states. The increases were generally 1c over existing rates, though in some instances no increases were made, and in others increases of ½, 1½ and 2½c. The proceeding grew out of a controversy between the St. L. S. W. Ry. and carriers operating north of St. Louis relative to division of through rates. The Commission was asked to fix the divisions of whatever through rates might be prescribed. No attempt was made on the part of the carriers to sustain the reasonableness of the suspended rates, the testimony being confined entirely to the question of divisions. HELD, that respondents have failed to sustain the burden of showing the increased rates to be just and reasonable. Advance denied. Rates on Lumber and Other Forest Products, 30 I. C. C. 371.

(h) Disputes between carriers as to divisions do not justify increases of rates. Rates on Lumber and Other Forest Products, 30 I. C. C. 371, 372.

(i) Carriers will not be permitted under the guise of changed arrangements in respect of reciprocal charges, to pass along increased charges to their patrons. They may not cast upon shippers any burden of increased charges resulting from a change of divisions of charges. People's Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C., 657, 659.

(j) Possible loss or gain under existing contracts ought not to preclude the establishment of rates that are just and reasonable. Malt Rates to New Orleans, La., 30 I. C. C., 587, 592.

(k) Complainants attacked the rates, transit rules, and practices of southern carriers connecting with carriers operating between the Mississippi, Ohio and Potomac rivers and Buffalo, N. Y., as unjust, unreasonable and discriminatory. The Commission also considered proposed changes in the transit regulations of the Buffalo lines on rough hardwood lumber originating west of the Mississippi River and south of the Ohio, consigned to Buffalo, East Buffalo, Black Rock and North Tonawanda, N. Y., subjecting traffic to the sum of the locals or proportionals, plus 1-2c per 100 lbs., minmum $3 per car, for the transit service. Existing tariffs of the Buffalo lines provided for transit at the through rate plus $5 per car while the tariffs of the southern lines provided that property destined to points beyond their lines should be entitled to the privileges accorded by subsequent carriers. But the southern lines refused to accept less than their full proportion of the Buffalo rates; hence the proposed change. This would increase rates from 1-2 to 14c and increase the expense of marketing the lumber from 15c to $5.95 per 1000 feet. The southern lines refused to participate in the transit arrangement because the divisions accruing to them was less than their local rate. Southern carriers provided for combinations on the crossings, where routed over certain lines increasing the through rates to the

same extent as the proposed rule of the Buffalo lines. HELD (1) that the evidence did not justify the proposed increase in rates; and (2) the rates, regulations and practices of the southern lines were not unreasonable nor discriminatory, except as to the rule of the M. L. & T. R. R. & S. S. Co. providing for application of combination rates on shipments routed over certain lines found to be unreasonable. Lumber Transit Privileges at Buffalo, N. Y., 33 I. C. C., 601.

(l) An increase in rates can not be justified on the ground that a particular carrier, which transports shipments over only a comparatively small portion of the entire through route, receives an unsatisfactory division of the joint rate. Lumber Transit Privileges at Buffalo, N. Y., 33 I. C. C., 601, 605.

(m) Testimony to the effect that the earnings of carrier under divisions received are not remunerative does not meet the burden imposed by the statute upon carrier to justify higher charges. Illinois-Minnesota Coal Rates, Unrep. Op., A-962.

§7. (7) Lack of Revenue.

(a) The Commission may legally deal with rate schedules as a whole, and insufficiency of revenue is a proper ground upon which, nothing substantial to the contrary appearing, to accord advances which will result in just and reasonable rates. The Five Per Cent Rate Case, 31 I. C. C. 351, 450. (Dissenting Opinion.)

(b) There exists a presumption in favor of inter-relations in a rate fabric that has long continued undisturbed. And there are common-sense limits within which any attempts at a rate adjustment are necessarily confined. Every act of rate making necessarily carries vestiges of discrimination. The Commission is not called upon to do the impossible and to show such meticulous attention to the adjustment of fractions as to preclude the possibility of any readjustment of rates whatever. With a demonstration of inadequate revenues, and with a presumption in favor of the propriety of the interrelation between rates long in effect, an advance moderate in amount, calculated to produce but a reasonable increment in earnings, and affecting all traffic in the same proportionate degree, is the plain dictate of law and of common sense. The Five Per Cent Rate Case, 31 I. C. C. 351, 450. (Dissenting Opinion.)

(c) Contracts or investments made under an existing rate not to preclude the raising of rates if same are found unreasonably low. Chattanooga Log Rates, 30 I. C. C. 36, 39.

(d) As I understand it, justification of the rates permitted by this decision to be increased rests largely upon the need of greater net revenue to enable the carriers to afford adequate service to the public to meet their financial obligations and mintain dividends in such manner as to encourage further investments in railways and their securities. If these considerations constitute a sufficient basis for wholesale approval of a body of increased rates by all carriers in a given territory, competing or connecting, weak or strong, the same must be equally true if every road in the country, as well as every rate, were included in a proceeding before us. The Five Per Cent Case (Diss. Op.), 32, I. C. C., 325, 337.

(e) Gross earnings have increased while net earnings have decreased because of increased expenses. Class and Commodity Rates from Stations in Maine 31 I. C. C., 18, 20.

(f) Class rates in C. F. A. territory on a lower scale than elsewhere; commodity rates too low and probably unremunerative. The Five Per Cent Case, 31 I. C. C., 351, 403.

§8. Presumptions.

See Evidence IV.

(1) Continuance of Prior Rate.

(a) Carriers must give convincing reasons why rates of long standing should be materially increased. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C., 247, 257.

(b) Stronger proof of justification is required for advancing old rules than in case where proposed increase relates to rate in effect but a short time. Freight Rates From Minnesota Points, 32 I. C. C. 361, 364.

(c) Justification must be clear and convincing when long-standing relation is sought to be changed. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594.

§8½. Comparisons.

See Comparative Rates.

(a) Where a comparison of the different parts of a suspended schedule is

conclusive that the rates are not based on distance, the mere fact that there are other rates on lumber as high as some of the suspended rates, considering distances alone, is not persuasive that such suspended rates are reasonable. While railroads cannot be expected to grade their rates so closely with regard to distance that there will be no inconsistencies in their schedules, yet when they seek to justify proposed increases by comparisons based on distance, the fact that the proposed schedule was manifestly made without regard to distance is entitled to consideration in determining the weight to be given to the comparisons made. Lumber to Nashville, Tenn., 31 I. C. C. 186, 188.

(b) In considering a proposed rate increase, a comparison of single years with other single years, or of one 5-year period with another, may lead to confusing and inaccurate conclusions. To be on firm ground, the general course of the returns of carriers upon their investment through a long series of years must be examined. The Five Per Cent Case, 31 I. C. C. 351, 364.

§13. Detriment to Shipper.

See Evidence §45.

(a) That contracts have been entered into on the basis of a lower rates does not of itself preclude the increasing of such rate. Rates on Crushed Stone, 29 I. C. C. 136, 137.

(b) Carrier not estopped to advance a rate because of its agreement to maintain a lower rate. Doubtful whether evidence of this nature should be received at all. Duluth Log Rates, 29 I. C. C. 420, 421.

(c) The Commission considered proposed rates by the Alabama Great Southern Ry., on shipments of logs from Alabama and Mississippi points to Chattanooga, Tenn. Existing carload rates ranged from 2⅛c for distances of 10 miles and under, to 7½c for distances of from 270 to 275 miles, minimum 40,000 lbs.; and the rates proposed ranged from 2c to 8½c for corresponding distances, minimum 40,000 lbs., for distances of less than 140 miles, and 30,000 lbs. for greater distances. Existing rates applied only from local stations, and not from junction or common points, such as Birmingham, Attalla, Gadsden or Meridian, resulting in inconsistencies. For instance, Birmingham took an 8½c rate, while local stations north and south thereof took 4½c and 5c rates; while under the proposed rates, Birmingham would take 6½c. The proposed rates would not only graduate more uniformly with increased distances than the existing rates, but their purpose was to iron out these inconsistencies. The proposed rates lined up favorably with rates of other roads into Chattanooga and with the log rates of other roads for similar distances into Nashville and Memphis, Tenn., and to Ohio River points. Shipments into Chattanooga over respondent's lines did not amount to one-tenth of the tonnage over the Y. & M. V. R. R. into Memphis, and unlike the Memphis situation, as disclosed in 26 I. C. C. 323, respondent got none of the outbound shipments of lumber from the logs it hauled to Chattanoga. Its traffic moved in gondolas and flat cars and bore the return of the empty equipment. An average trip for a car was ten days. Unlike the other carriers delivering logs at Chattanooga, respondent absorbed the $2.50 switching charge. The average log haul was 200 miles, for which respondent's per-car revenue was less than that for all other low-rated commodities. Existing rates had been in effect since 1900, since which time the distance of the average haul had greatly increased by reason of exhaustion of forests closer to Chattanooga. Protestants operated large sawmills at Chattanooga and had large timber holdings in southern Alabama, and contended that their investments were made dependent on existing rates; that an increase would injure these investments, and consequently was not warranted. HELD, that the fact that protestant's investments were made under the existing rates would not preclude the raising of the rates. Advance allowed. Chattanooga Log Rates, 30 I. C. C. 36.

(d) The Commission investigated a proposed cancelation of joint rates on grain, C. L., from St. Paul and Minneapolis, Minn. and points on the G. N. Ry. in Minnesota and Iowa to Kansas City, Mo., and points in Missouri, Kansas, Oklahoma and Colorado. The existing joint rates were equal in most instances to the rates from the Kansas, Missouri, Oklahoma and Colorado destinations to Chicago, Ill. The rates to Kansas City applied via the Great Northern Ry. as far as Sioux City, Ia.; C. B. & Q. R. R. to St. Joseph. Mo., and A. T. & S. F. Ry. beyond. The rates to the other points applied via the G. N. Ry. as far as Sioux City; C. B. & Q. R. R. to St. Joseph or Kansas City; and A. T. &

S. F. Ry.; M. K. & T. Ry.; or St. L. & S. F. Ry. beyond. All of these rates were published by the lines south of the lower Missouri River crossings under concurrences of the northern lines. They were published specifically from St. Paul and Minneapolis and apply also from the intermediate points. Protestants were particularly interested in the rates on corn from stations on the G. N. Ry. between Marshall, Minn. and Sioux City, Ia., inclusive. There was a drought in Kansas during the summer of 1913 and considerable quantities of corn had been bought at and shipped from the G. N. Ry. stations in Minnesota and Iowa from which the proposed rates would apply. The shipping points on the G. N. Ry. involved were the nearest source of supply and protestants insisted that the producing territory in that region be kept open to southwestern consumers. The rates to Kansas City were applicable via a route involving a three-line haul, namely, G. N., C. B. & Q. and A. T. & S. F. Rys. The cancellation of these rates would leave in effect via this route only the combinations of intermediate rates, which would be higher. However, there were joint rates in effect via the two-line route of the G. N. and C. B. & Q. Rys. to Kansas, which were higher than those applicable via the three-line route. This two-line route was in reality the one, the rates of which were in issue, and this was also true as to the rates to points beyond Kansas City which base on Kansas City. Hence the existing joint rates via the G. N. and C. B. & Q. Rys. to Kansas City and the rates to points beyond based thereon are the rates that are considered. The present rate on corn from Marshall, Minn. to Kansas City was 13.75c; the proposed rate 20.5c; present rate to Wichita 21c: proposed rate 30.5c. The same rates also applied from Pipestone and Hills, Minn. and Sioux Center and Leeds, Iowa, while the proposed rates from these points vary from 2c to approximately 4c. The present rates from the Twin Cities to the destinations involved were joint through rates and for some years had been maintained as maxima from intermediate points. The distance from the Twin Cities to Kansas City via the short line is 497 miles, via the three-line route, as to which it is proposed to cancel the joint rates, 676 miles, and via the two-line route of the G. N. and C. B. & Q. Rys., about 645 miles. In so far as classes and commodities are concerned the G. N. Ry. applied the Twin Cities rates from intermediate points to the southwest, but owing to the length of the line and the low level of the rates, it does not feel justified in doing so as to grain. It is pointed out that the joint through rates from these local stations on the G. N. Ry. via Sioux City and C. B. & Q. R. R. are considerably higher than the joint through rates which apply from the Twin Cities and intermediate points via the G. N., C. B. & Q. and A. T. & S. F. Rys through Sioux City and St. Joseph, the latter involving moreover a three-line haul while the former is a two-line haul. The rate on corn from the Twin Cities and intermediate points via G. N., C. B. & Q. and A. T. & S. F. Rys. to Kansas City is 13.75c, while via the G. N. Ry. in connection with the C. B. & Q. R., R. through to Kansas City it is 14.5c, and the rate to Kansas City from intermediate points on the G. N. Ry. via the latter range from 20.5c to 14.22c. HELD, it is clear that the rates sought to be cancelled are comparatively low. They are relatively lower than rates from producing territory in Nebraska to Chicago. The movement of corn to the destinations herein is light, compared with that to a recognized market, and only exceptional conditions cause an appreciable increase, and respondents have justified the proposed advance. Grain Rates from St. Paul, Minn., 32 I. C. C., 96.

(e) While it may be shown that a protestant's business has decreased since the increase of a certain freight rate and that such increase in the rate may make it more difficult for protestant to compete in a given territory, these facts form no basis for requiring the carrier to establish or maintain a rate unless it should be found upon all the facts appearing that such rate is reasonable. Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co., 32 I. C. C., 208, 211.

(f) Shippers have no vested interest in maintenance of existing rates by reason of investments made under those rates which precludes increasing rates if unreasonably low. Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 14.

§14. Benefit to Industry.

See Evidence §45.

(a) That the establishment of protestant's plant has given to a commodity its commercial value, is not sufficient to condemn a proposed increase in rates.

Straw Rates from Stations in Missouri to Alton, Ill., 29 I. C. C. 562, 564.

§14½. Motive of Carrier.

See Evidence §34½.

(a) The motives which underly the action of carriers in increasing rates are not matters about which the Commission may indulge in speculation. The question whether proposed rates are reasonable must be determined upon the facts disclosed by the record. Freight Rates from Minnesota Points, 32 I. C. C., 361, 363.

§15. Standard for Judging Advance.

(a) That the average length of the haul is slightly in excess of the haul from points from which it is proposed to continue existing rates, does not prove that increased rates under suspension are just and reasonable. Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 22.

(b) The law fixes the standards by which the rates and practices of carriers must be judged, and the Commission can act only in accordance therewith and after a full hearing; it has no authority to approve rate increases to stimulate business. The Five Per Cent Rate Case, 31 I. C. C. 351, 426.

(c) Rates not based on distance, and mere fact that other lumber rates are as high as some of suspended rates, considering distances alone, is not sufficient to prove such rates reasonable. Lumber to Nashville, Tenn., 31 I. C. C., 186, 188.

§15½. Two-Line Haul.

See Evidence §59.

(a) Owing to two-line haul defendants may properly increase their joint rates on plaster and products to the extent of 2c per 100 pounds for distances not in excess of 500 miles. Eldorado Okla., to Kansas Points. United States Gypsum Co. v. C. R. I. & P. Ry. Co. Unrep. Op. A-760.

(b) The Commission considered a proposed increase from 28 to 30c in the rate on yellow-pine lumber in carloads from the south-western blanket territory to Sioux City, Ia. The rate from the same territory to Kansas City was 24c and to Omaha, Nebr., 25c. On an average weighted haul of 1117 miles to Sioux City the 28c rate yielded 5.013 mills per ton-mile, the 30c rate would yield 5.37 mills; while on the average weighted haul of 960 miles to Omaha the 25c rate yielded 5.21 mills. The short-line distance to Omaha was about 200 miles greater than to Kansas City; that to Sioux City only about 100 miles greater than the short-line to Omaha. While two carriers serving the producing area reached Omaha, none of them reached Sioux City. HELD that while there was some justification in this fact for a distinction between the movements to Omaha and to Sioux City, this distinction had already received recognition in the proportionately higher rate, distance considered to Sioux City, as compared with Omaha, than to Omaha as compared with Kansas City. Proposed increased rates not justified. Cancellation of suspended schedules directed. Lumber Rates from Points in Arkansas, 34 I. C. C., 102.

IV. REASONABLENESS OF ADVANCED RATES.

§17. In General.

See Claims, §2 (g); Class Rates, §2 (g); Evidence, §17.

(a) In considering increased rates, the only issue to be determined is whether such rates are just and reasonable. The carriers, the protesting shippers and the public generally are alike entitled to just and reasonable freight rates. Rates on Crushed Stone, 30 I. C. C. 22, 28.

(b) The Commission considered the proposed cancellation of joint proportional commodity rates of from 5c to 6½c per 100 lbs. on shipments of straw from an average distance of 49.7 miles, and the points in eastern Missouri to Federal, Ill., application of the specific commodity rates of from 5¾c to 9½c, plus a bridge toll of 1½c to Alton, from where a charge of $2 is imposed for switching to Federal, two miles distant. In Central Freight Assn. Territory a scale of rates was employed, based on a charge of $7 per car of 38½ ft. and under for a 50-mile haul, and $1 for each additional 25 miles, which scale was applied by roads east of the Mississippi River to Federal. But the large use of scrap paper in the manufacture of strawboard had materially lowered the rates on straw in that territory.. From points of origin involved the C. B. & Q. R. R. had a 5½c rate to Federal, while the Wabash R. R. maintained rates of from 8c to 9½c, and the Missouri Pacific R. R. from 8½c to 11½c. Straw had no commercial value at points

of origin until the establishment of protestant's strawboard mill at Federal. HELD, that the proposed cancellation of rates was justified. Advance allowed. Straw Rates from Stations in Missouri to Alton, Ill., 29 I. C. C. 562.

(c) The Commission considered the proposed cancellation of special commodity rates of from 4c to 5½c, yielding $12 to $16.50 per car of 30,000 lbs., on shipments of lumber in carloads from Porterville, Ala., and intermediate stations, to Chattanooga, Tenn., over distances of from 12 to 61 miles, and the substitution therefor of interstate mileage scale rates of from 4½c to 6c, yielding $13.50 to $18 per car of 30,000 lbs. It was also proposed to substitute mileage scale rates for commodity rates on shingles shipped in carloads from Sulphur Springs, Ga., to Chattanooga. Lumber rates from stations south of Porterville to Meridian, Miss., 295 miles from Chattanooga, were based on the interstate mileage scale. Respondent contended that the departure from the mileage scale on shipments from Porterville and stations north thereof. was originally compelled by cross-country competition created by the T. A. & G. Ry., a line extending from Gadsden, Ala., to Chattanooga, and paralleling respondent's line for the whole distance. The Lookout Mountain Range lay between the two lines, and the maximum distance was, in an air line, about 12 miles, and by cross-country wagon roads 18 to 20 miles. Sawmill operations were at first confined to the valleys, but later extended to the interior, until points were reached from which lumber might be hauled to either line with substantially equal facility. And in 1907 and 1909, commodity rates were applied to lumber and shingles, respectively, as indicated. At the time of the hearing, competition no longer existed, and the movement of lumber had practically ceased, except as to lumber originating in the valley adjacent to respondent's line on the east, or in territory west of the line. Comparisons with rates via lines serving Nashville and Memphis, as well as Ohio River crossings and Gulf ports, and other lines entering Chattanooga, indicated that rates via respondent's line would be comparatively greater under the interstate mileage scale. Respondent contended that it absorbed the charge of $2.50 per car for delivery to industries located on the Chattanooga Belt Ry., but it appeared that the Belt Ry. was operated by it. HELD, that the present rates are just and reasonable, and that the proposed increases have not been justified. Advance denied. Lumber Rates from Local Points to Chattanooga, Tenn., 29 I. C. C. 646.

(d) Carrier not justified in increasing factor where through rate exceeds sum of the intermediate rates. California-Nevada Lumber Rates, 28 I. C. C. 313, 315.

(e) The Commission considered proposed increases in rates on iron and steel window frames and sash from interstate points to Texarkana, Tex.-Ark., and points in Louisiana, Texas and Mexico. Iron and steel window frames and glazed sash, straight or mixed carloads, were rated fifth class, minimum 26,000 lbs., except from Official Classification Territory; unglazed sash, in straight carloads, rated fourth class, minimum 30,000 lbs.; iron and steel window frames and unglazed sash, in mixed carloads, first class, minimum 10,000 lbs. The proposed tariffs cancelled the fifth-class rating on mixed carloads of iron and steel window frames and glazed sash, leaving the former at fifth class, minimum 26,000 lbs., and making rates on glazed or unglazed sash, in straight or mixed carloads, fourth class, minimum 26,000 lbs. Respondents, at the hearing, expressed a willingness to establish fifth-class rates on window frames and glazed or unglazed sash, minimum 26,000 lbs., with graduated minima. HELD, that respondents will be expected to withdraw the suspended tariffs. No opinion expressed as to the reasonableness of the present minimum weight. Iron and Steel Window Frames and Sash, 28 I. C. C. 500.

(f) Change in long-standing relation of proportional rates on grain from upper and lower Mississippi River crossings not justified. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555.

(g) Direct lines to Shreveport have depressed their rates to meet combinations through lower Mississippi River crossings. They cannot be required to raise their rates in order to place Texarkana upon the same basis as Shreveport. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 581.

(h) Advance in storage charges on traffic held in freight sheds after expiration of free time justified. New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607.

(i) Defendants canceled class rates on cold-pressed cottonseed cake, which was same rate applied to fertilizer. Commodity now used for stock food, and a commodity rate was established. This was in effect an advance, and not a newly established rate on a new commodity, which advance defendant has justified. Mary Mac Plantation Co. v. Y. & M. V. R. R. Co., Unrep. Op. A109.

(j) Increased rate on watermelons from Alex, Okla., to Omaha, Neb., not found to have been unreasonable. Gifford Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A129.

(k) Proposed increase from 30,000 to 33,000 lbs. in the minimum carload weight on potatoes moving in West and Northwest during the winter not found to be unreasonable or unjustly discriminatory. Order of suspension vacated. Potato Carload Minimum Weights, Unrep. Op. A147.

(l) Advance in rates on beer and returned empty containers, in carloads, between Jacksonville and Palm Beach, and Miami, Fla., applicable to shipments from Chattanooga, Tenn., justified in part. Reasonable rates prescribed. Chattanooga Brewing Co. v. N. C. & St. L. Ry., Unrep. Op. A179.

(m) Higher rates in effect on gum lumber from Houston, La., to Kansas City, Mo., than from Shreveport. Houston is intermediate to Shreveport. Application on file for relief from section 4, and tariff proposing increase in rates from Shreveport, now under suspension. Complaint dismissed and question not decided. Mansfield Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op., A193.

(n) An increase in the rate for transportation of coal from Valley, Pa., to Bedford, Ind., found to have been justified. Holverscheid & Co. v. B. & O. R. R., Unrep. Op. A299.

(o) The Commission considered respondent's proposal to cancel the commodity rate of 56c on peanuts in carloads from New Orleans and other Louisiana points to Oklahoma City, Okla., leaving in effect the fourth-class rate of 90c. Points of origin lie in southeastern Louisiana, on the L. R. R. & Nav. Co., T. & P. Ry.; N. O. T. & M. R. R.; Morgan's L. & T. R. R. & S. S. Co.; Y. & M. V. R. R. and I. C. R. R., and are distant from New Orleans not above 128 miles. The rate from Virginia points to New Orleans was 45c and to Memphis and St. Louis, the natural gateways for the traffic, 39c. From New Orleans to Oklahoma City the present rate was 56c, while from Memphis and St. Louis it was 72c, giving the New Orleans gateway an advantage of 10c. If the proposed rate became effective, New Orleans would enjoy an advantage of 24c. The present rate of 56c was blanketed over practically the whole of Louisiana, and there was a movement from the western part of the state in the vicinity of Shreveport and Alexandria. There was practically no movement of peanuts through New Orleans from points east of Louisiana. The distance from New Orleans to Oklahoma City is 689 miles, the rate of 56c yielding 1.62c per ton-mile; the average distance from Louisiana points 650 miles, yielding 1.75c per ton-mile, while on shipments from the same points of origin to St. Louis and Chicago for average distances of 684 and 910 miles, class rates of 35c and 41 yield 1.02c and 0.9c per ton-mile, respectively. HELD, that the proposed rate of 90c is obviously too high. Advance denied. Peanut Rates to Oklahoma City, Okla., 30 I. C. C. 346.

(p) Upon petition a rehearing was granted in 27 I. C. C. 78, involving the reasonableness of increases proposed in local joint and proportional break-bulk rates, domestic and export, on grain and grain products, from Milwaukee, Manitowoc, and Kewaunee, Wis., to points in Trunk Line territory east of Niagara frontier. The testimony presented at the first hearing was incomplete, and respondents, failing to sustain the burden of proof, were required to cancel the tariffs under suspension. One of the questions with regard to which the testimony at the original hearing was inadequate, was whether the division of the rate received by the break-bulk boats for transporting grain and grain products from Milwaukee to Ludington was greater or less than the cost of transporting the same by car ferry. From testimony on rehearing, it appeared that the Pere Marquette Ry. allowed car ferries $7.50 per loaded car, irrespective of contents, and that for transporting oats from Milwaukee to Ludington, the break-bulk boats received 2c per 100 lbs. and 2½c for corn and wheat. On a basis of 48,000 lbs. of oats and 60,000 lbs. of wheat or corn to the carload, this would amount, in each instance, to $12 per car. On shipments of corn from Milwaukee to New York via Pere Mar-

quette car ferry and railroad and N. Y. C. lines, the P. M. R. R. received for its share of the rail haul 2.49 mills per ton-mile, and the N. Y. C. R. R. 2.67 mills per ton-mile; and on a car of oats the P. M. Ry. received 2.35 mills and the N. Y. C. R. R., 2.26 mills per ton-mile. On corn and oats moving break-bulk, the P. M. R. R. received, respectively, 2.34 and 2.11 mills per ton-mile and the N. Y. C. R. R., 2.06 and 2.16 mills. The earnings of the P. M. R. R. on the movement via the break-bulk route were $2.69 less per car of oats and $2.24 less per car of corn or wheat than via the car ferry route. On the movement to some eastern points this difference was less and to others greater, but in all cases the break-bulk grain yielded less to the carriers than that which moved by car ferry. On break-bulk grain the charge paid by the steamship company to the P. M. R. R. for handling from the steamship hold to the elevator at Ludington was $1.50 per 1,000 bu. The net cost to the P. M. R. R. of elevating, after allowing for the payments made by the steamship company, was $2.41 per car. In order to furnish cars to handle the break-bulk grain, the P. M. R. R. had to frequently haul empties from points on its line west of Saginaw and Grand Rapids, Mich. In 1912 there were 32,212,372 lbs. of corn, 51,844,920 lbs. of oats, and 10,911,140 lbs. of barley shipped to Milwaukee and forwarded via the break-bulk route. This grain came from Minnesota, Iowa, the Dakotas, Wisconsin and Illinois, the greater part originating in territory in which Chicago competes with Milwaukee as a market. For the fiscal year 1912 the P. M. R. R. paid to the C. M. & St. P. R. R. for switching to and from car ferries at Milwaukee, use of terminal, and all other items of terminal expense, $67,000 for 27,000 carloads handled in and out of its car ferries, amounting to about $2.50 per car which the P. M. Ry. included in the estimate of $7.50 per car for the car ferry movement. The freight revenue per mile of line for the P. M. R. R. was $4,828; for the Erie R. R., $17,959; for the L. S. R. R., $19,726, and for the Pa. Ry., $26,000. During the 10 years since the organization of the Pere Marquette Line steamers as an independent carrier, it has paid cash dividends aggregating 113 per cent, or an average of 11.3 per cent per year, and has declared a stock dividend of 50 per cent. HELD, that the respondents have justified the proposed increased break-bulk rates, domestic and export, on grain and grain products from Milwaukee, Manitowoc and Kewaunee, Wis., to points in Trunk Line territory east of Niagara frontier. The order in the original case is vacated. Respondents will be permitted to publish the same rates on shipments via the break-bulk route as are contemporaneously maintained via the car ferry or all rail route. Break-bulk Rates on Grain, 30 I. C. C. 357.

(q) The Commission considered the proposed increase from 25c to 30½c in the rate on malt in carloads from Minneapolis, Minn., and other points to New Orleans, La., the contention of protestants being that such increase would give Chicago maltsters an undue advantage over their Milwaukee competitors. Maltsters in these cities receive their barley from Minneapolis under a commodity rate of 7.5c, to which 17.5c from Chicago to New Orleans is added to make up the through rate. It is proposed to increase this added rate to 23c. Rates from Minneapolis to New Orleans, Dallas and Houston, Tex., Salt Lake City, Utah and Denver, Colo., are, respectively, 30.5c (proposed) 38c, 40.5c, 60c and 35c for distances of 1,259, 1,014, 1,331, 1,408 and 940 miles; and from St. Louis to Jacksonville, Fla., and Birmingham, Ala., 28c and 27c for distances of 949 and 475 miles. From 1904 to 1911 the rate from Minneapolis to New Orleans was 30.5c or higher. Malt rates in the territory in question generally conform to the class D rate, which from Peoria, Ill., to New Orleans is 23c. In Texas Brewing Co. v. A. T. & S. F. Ry. Co., 21 I. C. C. 171, the following rates were established on malt in carloads to Fort Worth, Tex., a distance of 1,058 miles from Chicago; from Chicago, 34½c; from Milwaukee, 35½c; from Minneapolis, 38c. The through rate on barley from Webster City, Ia., via Chicago, to New Orleans was 32c; the local rate to Chicago 13c, leaving a balance of but 19c for the Chicago maltster to pay for the Chicago-New Orleans haul, or, compared with the 23c balance which the proposed rate will require of Milwaukee maltsters on the remainder of the Minneapolis-New Orleans haul. But it did not appear that the through rates from Webster City and other Iowa and South Dakota points compare unfavorably with the through rate from Minneapolis to New Orleans. HELD, that respondents have shown the proposed rate

not to be per se unreasonable. Order of suspension vacated. Malt Rates to New Orleans, La., 30 I. C. C. 587.

(r) Commission should not be expected in every case to check superseding issues of all tariffs to determine whether or not, by any possible construction, a rate may be increased via a possible route over which there may not be any movement. New England and Canadian High Explosive Rates, 29 I. C. C. 697, 698.

(s) Advanced rates based upon the proposed increased rates to the Northern Pacific coast terminals found unjustly discriminatory. Acme White Lead & Color Works v. N. P. Ry. Co., Unrep. Op. A418.

(t) The Commission considered proposed increases of rates on lumber from Kentucky and Tennessee points to Nashville, Tenn. Respondent, the L. & N. R. R., proposed to increase rates from 6c, on the main line of its Memphis division, to 7c for distances of from 49 to 92 miles and 8c for from 56 to 105 miles; from 7c, on its Clarkesville & Princeton branch, to 9c, yielding 24 miles per ton-mile for distances of from 62 to 84 miles and 10c for from 86 to 89 miles; from 7c on its Clarkesville mineral branch, to 8c for from 73 to 84 miles, and from 8c, on the same branch, to 9c for from 89 to 102 miles. HELD, that the respondent had not justified the proposed increases, because while professedly based on a distance scale, gross inequalities were apparent. Cancellation of suspended schedules directed. Lumber to Nashville, Tenn., 31 I. C. C. 186.

(u) The Commission considered proposed increases in class and commodity rates from certain "Ellsworth group" points on the M. C. R. R. to points in Central Freight Association territory, by applying from points formerly accorded Boston rate differentials of 6c, 6c, 5c, 4c, 3c and 2c over the Boston rate, on the numbered classes, and similar differentials on certain commodities. Thus the group taking Boston rates to Central Freight Association territory was reduced to the area of the smaller group taking Boston rates to trunk line territory. Points east of Bangor, Me., farther distant than the points affected by the proposed increase continued to take the Boston rate. Class rates of 76c, 67c, 52c, 36c, 31c and 26c to Chicago, 1,191 miles, would thus yield ton-mile earnings of $1.28, $1.12, 87c, 60c, 52c and 44c. HELD, that respondents had not sustained the burden of justifying the proposed subdivision of the Ellsworth group and the increases which would result therefrom, because, while justification was based upon the Boston rate, there was no showing it was reasonable. Cancellation of suspended tariffs directed. Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18.

(v) The Commission considered proposed increased rates on lumber from Lake Charles and West Lake, La., points but 3 miles apart, to Palacios, Port Lavaca, Aransas Pass, Portland, Rockfort and Corpus Christi, Tex. Points of destination are situated on the Gulf and points of origin on a lake connecting with the Gulf by a navigable waterway. The proposed rates were 17½c to Palacios and Port Lavaca, yielding 12.7 and 11.8 mills per ton-mile for 275 and 297 miles via the all-rail route, and 20c to Aransas Pass, Portland, Rockfort and Corpus Christi, yielding 10, 9.8, 9.6 and 10.3 mills per ton-mile for distances of 401, 407, 417 and 408 miles. Rates from Little Rock, Ark., to Branson, Galena and Crane yielded 13.1, 12.2 and 11.8 mills, respectively, for distances of 275, 295 and 305 miles. The existing rate of 13¾c from Lake Charles and West Lake to Arkansas Pass, Portland, Rockfort and Corpus Christi was originally made to meet water competition. HELD, that the increases in rates are justified, the existing rates being abnormally low. Ordered, that the order of suspension be vacated, without prejudice to any complaint which may be filed against any of the rates which might be established as a result. Lumber Rates from Lake Charles and West Lake, La., 31 I. C. C. 258.

(w) The Commission considered an increase of from 15c, yielding 11.2 mills per ton-mile, to 18½c, yielding 13.9 mills per ton-mile, in the rate on packinghouse products from Cedar Rapids, Ia., to St. Paul and Minneapolis, Minn., distant 256 miles. From Waterloo, Ia., an intermediate point, 53 miles north of Cedar Rapids, the rate to St. Paul was 18½c, and the same rate applied from Marshalltown, 244 miles, Sioux Falls, 240 miles, and Sioux City, 270 miles. HELD, that the increased rate to St. Paul, Minneapolis and Minnesota Transfer was

justified. Packing-House Products from Iowa Points, 31 I. C. C. 308.

(x) The Commission considered proposed increases in the rates on knitting factory products from North Carolina points to Texarkana, Ark.-Tex. There was a commodity rate, $1.56 on such products generally from 180 North Carolina points, and another of $1.79 on underwear, hosiery, shirts, gloves and other named articles from 28 specified points. The first class rate was $1.87. Respondents sought to cancel the $1.56 rate and restrict the $1.79 rate to underwear and hosiery, restoring the first class rate in all other cases. Under Rates on Knitting Factory Products, 25 I. C. C. 634, the carriers had established rates of $1.12 and $1.22 on shipments from the 28 points to Little Rock and Fort Smith, Ark., consisting of 62c to Memphis and the first class rates beyond. The combination rate from such points of origin to Texarkana via Shreveport, La., was $1.72; or $1.22 to Shreveport and 50c thence to Texarkana. HELD, that the proposed increases were not justified. Proposed tariffs canceled. Rates on Knitting Factory Products to Texarkana, Ark.-Tex., 31 I. C. C. 669.

(y) The Commission considered proposed increases, generally of 2c in the rates on cement in carloads, from Chicago group points, Mason City and Des Moines, Iowa, St. Louis, Mo., and Iola, Kans., to St. Paul, Minneapolis, and other points in Minnesota, Wisconsin, Iowa, and South Dakota, and also from Mankato, Minn., to Chicago, Ill. Existing cement rates were adjusted on no uniform basis. Rates to St. Paul from Chicago, St. Louis, Mo., Mason City, Des Moines, and Iola, were 8c, 8.5c, 5c, 7c and 15c respectively; hence the percentage of increase proposed was not uniform. In 1914 the carload minimum was increased from 40,000 to 50,000 lbs. **The Chicago Group.** This included South Chicago, La Salle, Utica, Dixon, and Oglesby, Ill., Buffington, Ind., and Hannibal, Mo. The average short-line distance to St. Paul is 422 miles, and the proposed rate of 10c would yield 4.7 mills per ton-mile. From La Salle to Wisconsin interior points rates ranging from 5c to 10c were proposed, yielding per-ton-mile earnings of 6.6, 5.7 and 5.5 mills for distances of 363, 421, and 430 miles. The proposed rates of 7c and 6c from La Salle and Buffington, respectively, to Milwaukee would yield 7.7 and 11.3 mills per ton-mile for distances of 180 and 106 miles. From Hannibal to St. Paul the proposed rate of 10c would yield about 4 mills per ton-mile. **St. Louis, Mo.** From St. Louis to St. Paul the existing rate was 8.5c, that proposed, 10.5c; each about 105 per cent of the existing rate from the Chicago Group. **Mason City, Ia.** The distance to St. Paul was 139 miles and the proposed rate 7c, and advance of 2c, was about 60 per cent of the proposed rate from the Chicago Group. **Des Moines, Ia.** The existing rate to St. Paul was 7c and the proposed rate 9c for a distance of 257 miles. **Iola, Kans.** The proposed rate to St. Paul, 604 miles, was 17c, an advance of 2c, yielding 5.6 mills per ton-mile. The average distance from all Iola Group points, extending from Mildred, Kans., to Dewey, Okla., was 623 miles, on which the proposed rate would yield 5.5 mills per ton-mile. **Mankato, Minn.** The distance to Chicago was 422 miles, the existing rate 10c and the proposed rate 12c. HELD, that respondents had justified the proposed increases, except as follows: (1) rates from Iola, Kans., and related points, not justified; (2) the rate from Mason City, Iowa, to St. Paul should not exceed 6c; (3) the rate from Des Moines, Ia., to St. Paul, should not exceed 8c; (4) rates from Des Moines and Mason City to points taking St. Paul rates, or which bore a fixed relation to the St. Paul rate, should be adjusted accordingly; and (5) rates from points intermediate Iola and related points and St. Paul should not exceed the rates from such Kansas Points. Cement Rates from Points in Illinois, 32 I. C. C. 369.

(z) The Commission considered proposed increases in rates as follows: (1) from 4c to 7c on drain tile and sewer pipe from Deepwater and Creighton, Mo., to Kansas City, Mo., 103 miles; (2) from 5c to 7c on hollow building tile shipped between the same points; (3) from 6c to 7c on brick shipped from Creighton to Corral and Knox, Kans., and from 6¼c to 7c on brick from Creighton to Valley Falls, Kans. The rate was 5c on clay products from Humboldt, Pittsburgh, and Coffeyville, Kans., to Kansas City for distances of 118, 129 and 168 miles. Rates from Deepwater to Paola, Kans., and Golden City and Rogersville, Mo., were 7c, 8½c and 12c on sewer pipe and 6c 8½c and 8c on hollow building tile, for distances of 104, 106 and 109 miles. Sewer pipe loads from 26,000 to 33,000 lbs. per car, hollow building tile and drain tile, 50,000 to 55,000 lbs.; the value of a car of sewer pipe is from $100 to $130

and that of building and drain tile from $75 to $100. HELD, (1) that respondents had not justified the proposed increased rates on brick and hollow building tile; and (2) that the proposed increases on sewer pipe and drain tile had not been justified, but the rates thereon might with propriety be increased to 5c. Schedules under suspension cancelled. Rates on Brick and Tile, 32 I. C. C. 497.

(aa) The Commission considered proposed increases averaging 2c per 100 lbs. in the northbound rates on lumber, principally hardwood, and wood products from points in Missouri, Arkansas, Louisiana, Oklahoma and Texas to St. Louis, Thebes, and Cairo, Ill.; Memphis, Tenn.; Cincinnati, O., Missouri River points and other points taking the same rates or rates based thereon. The existing rates had been established over 25 years before, when the southwestern hardwood industry was in its infancy to yield a measure of protection against competition. As the industry spread to the more remote southwest the hardwood rates had been made to approach more closely the yellow-pine scale. Many branch lines had been absorbed by the trunk lines and the junction point rate accorded to the branch-line mill. The proposed rates would narrow the existing rate margins, reaching the yellow-pine blanket rate as a margin further north than before. Hardwoods loaded 25.39 tons to the car; yellow pine 23.89. The value of the two commodities at time of shipment corresponded closely. Certain rates on hardwood from territory north of the Arkansas River to Missouri River points, exceeding existing yellow-pine rates, were proposed; while proposed hardwood rates from Cairo and points from which the same rates applied to Missouri River points would exceed existing rates by from 3c to 4c. It was also proposed to raise the rates from southeastern Arkansas points south of a line drawn from Camden to Arkansas City, Ark., to St. Louis and East St. Louis, Cairo, and Thebes, and Memphis from 16c, 13c and 11c to 19c, 16c and 14c. HELD, that the rates proposed were reasonable, with the following exceptions: (1) Rates which exceeded the existing rates on yellow pine for the same hauls; (2) rates from Cairo and points from which the same rates applied to Missouri River points and points taking the same rates or basing thereon, in so far as they exceeded the existing rates by more than 2c; and (3) rates from southeastern Arkansas points to St. Louis, East St. Louis, Cairo, Thebes, and Memphis, and points taking the same rates or basing thereon, in so far as they exceeded existing rates by more than 2c. Proposed increases on yellow pine and cypress lumber not justified. Northbound Rates on Hardwood, 32 I. C. C., 521.

(bb) The Commission considered proposed increased rates on coke in carloads from St. Louis, Mo.; Chicago, Waukegan, and Peoria, Ill.; Milwaukee, Wis., and other points to points in Minnesota, Wisconsin, Iowa, and South Dakota. General increases of 25c per net ton, minimum 30,000 lbs., average load 52,000 lbs., to Minneapolis and St. Paul (the "Twin Cities") and Duluth, and from Chicago to Wisconsin points west of Chippewa Falls; and 5c to 25c to Iowa, South Dakota points were proposed. From Chicago and Milwaukee to the Twin Cities, the per-ton-mile revenue would be 5.05 mills; and from the same points to Duluth, average haul 422 miles, the earnings would be about 5.33 mills per-ton-mile, at $2.25 per net ton. In 1912 respondent earned on hard coal about 18.29c for an average haul of 202 miles; on soft coal 19.34c, average haul 133 miles; on coke 13.2c, haul 170 miles. HELD, that the proposed increased rates were justified, except to Duluth, to which point the rate should not exceed $2.15. Rates on Coke from Chicago and Peoria, Ill., 32 I. C. C. 543.

(cc) The Commission considered proposed increased reshipping rates on wheat, corn and articles taking the same rates, via the Wabash R. R. from Omaha and South Omaha, Neb., and Council Bluffs, Ia., to Mexico, Mo., and thence via the C. & A. R. R. to Illinois points; also reshipping rates from the same points of origin to Missouri stations on the main line of the C. & A. R. R. from Blue Springs, Mo., to the Mississippi River, and on the south branch from Mexico to the Missouri River. To Illinois points proposed increases were from 9c, 10½c and 12c to 15c, 15½c and 17c on wheat and from 8c, 9½c and 11c to 13c, 13½c and 15c on corn; an average increase of 45 per cent. The existing revenue on corn per-ton-mile was 4 mills; that proposed, 5.8 mills; compared with 6.67 mills on the 269-mile haul from East Louisiana, Ill., to Chicago. The average distance from Omaha to the Mississippi River Crossings was 333 1-3 miles, while the distance to East Louisiana, Ill., via

the Wabash R. R. and C. & A. R. R. was 355 miles. The proposed increase would prevent the Wabash R. R. from hauling to Illinois points served by competing carriers, and also exclude Omaha, in competition with Kansas City, from Illinois points served only by the C. & A. R. R., which had its own line from Kansas City. The existing reshipping rates were uniformly 10½c and 9½c on wheat and flour, from either Kansas City or Omaha to the upper Mississippi River crossings and 9c and 8c to the lower crossings, including Louisiana, Mo. The C. & A. R. R. published joint rates from Kansas City in connection with other lines, on the same basis as its existing joint rates with the Wabash R. R. applicable to Omaha traffic. Proposed joint rates to points in Missouri on the main line from Blue Springs east were graded back from the Illinois points, while to the south branch stations rates were proposed ranging from 3c to 5c above the proportional rate to Mexico. HELD, (1) that the proposed increased rates to Illinois stations on the C. & A. R. R. had not been justified; (2) that the joint rates to south branch stations of the C. & A. R. R. were just and reasonable, and (3) that the proposed joint reshipping rates to stations on the C. & A. R. R. from Mexico to Blue Springs, Mo., were lower than the existing combination, and the order of suspension vacated in that respect. Fourth section application as to Illinois points denied. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590.

(dd) The Commission considered proposed increased rates on clay in carloads, crude or ground, in bags, barrels. or casks, minimum 50,000 lbs., from points in Georgia and South Carolina to New York, N. Y., Boston Mass., and other eastern points, rail-and-water via Savannah, Ga., and Charleston, S. C. uniformly 28c per gross ton above existing rates. Georgia points of origin were from 123 to 250 miles distant from Savannah; Carolina points from 129 to 152 miles from Charleston. The existing rate from all points of origin to New York and Boston was $2.91 per gross ton. The arbitraries beyond Ship Side, Boston, to Bennington, N. H., and Lawrence and Worcester, Mass., were $2.69, $2.07, and $1.79, respectively, for distances of 74. 26 and 52 miles. The all-rail rate from points of origin to New York was $5.06 to Boston, from $5.64 to $5,74. Rail and water rates on upland cotton from McIntyre, Ga., and Bath, S. C. to New York 412 and 381 constructive miles, respectively, the ton-mile earnings were 6.3 and 6.8 mills; to Boston for 462 and 431 miles, 5.6 and 6 mills. HELD, that respondents had not justified the proposed increases. Suspended tariffs cancelled. Rates from Clay Points in Georgia, 32 I. C. C. 564.

(ee) Not shown that rates yield less than fair return for services rendered; that average length of haul is slightly in excess of haul from other points does not prove reasonableness of proposed rates. Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 22.

(ff) The burden of establishing the reasonableness of proposed increased rates, placed by the statute upon the carriers, is not met by showing that they are part of a general readjustment, even though the existing relationship between producing points is maintained; for it must be shown not only that increased rates under investigation are not unjustly discriminatory but that they are, in fact, reasonable. Cement Rates From Salt Lake City, 33 I. C. C. 5, 7.

(gg) The Commission considered proposed increases in the combination rates on tomatoes in carloads moving under ventilation from Jacksonville and other Florida base points to points west of the Mississippi River, with reduction of 4,000 lbs. in carload minimum. The proportional rate to Ohio River crossings was 30c on a 50-lb. crate; to Memphis, Tenn., and St. Louis, Mo., 28c and 33¼c. Proposed increases to Kansas City, Mo., and St. Paul, Minn., were from 39c to 41½c and from 41c to 43c, respectively; while the class C and fifth class rates were 11c and 13½c from Memphis to Kansas City, and 11c and 13c from Cairo, Ill., to St. Paul. The rates from Jacksonville, Tex., Crystal Springs, Miss., and Jacksonville, Fla., to Kansas City were 50c, 55c and 83c, yielding 15.8, 15.3 and 14 mills per ton-mile for distances of 632, 721 and 1180 miles; but Florida tomatoes brought higher prices than those from other parts. HELD, that respondents had justified the proposed increased rates. Order of suspension vacated. Rates on Tomatoes from Jacksonville to Kansas City, 33 I. C. C. 145.

(hh) A carrier in order to justify a proposed new tariff must show not only that it will not result in the imposition of unreasonable charges, but that it

will not effect any unjust discrimination; and, by the same reasoning, in order to justify the closing of a gateway to interstate traffic it must be shown that the action will not operate to discriminate unjustly against such traffic. Class Rates between Stations in Louisiana, 33 I. C. C. 302, 305.

(ii) The Commission considered proposed increases in the rates on bituminous coal from mines in Pennsylvania, Maryland, and West Virginia to Philadelphia, Pa., Wilmington, Del., and Baltimore, Md., for transshipment to points inside the capes of Delaware and Chesapeake bays. The existing rates on coal delivered at the mentioned cities for such transshipment were 25c less than the rates for track delivery to industries in the cities; rates for transshipment to points outside the capes were 35c less to Philadelphia, 42c less to Baltimore. It was proposed to narrow the difference between the track-delivery and inside-the-capes rates to 18c by increasing the latter 7c per gross ton. For instance, rates from the Clearfield, Snowshoe, and Latrobe districts on the Penn. R. R. to Philadelphia and Baltimore were for track delivery, $1.60; existing inside-the-capes transshipment rate $1.35, proposed $1.42; outside-the-capes, Baltimore $1.18, Philadelphia $1.25. The inside-the-capes rates were ostensibly made lower than the track-delivery rates, so that carriers might reach by water industries or coal yards on their competitors lines. Cost of boat service and discharge decreased, and respondents had raised the rates; though it appeared that the cost varied greatly for different consignees, some of whom were located in the transshipment cities while delivery to others involved a water haul of 129 miles. On anthracite coal, the differentials of 25 and 30c between track-delivery and inside-the-capes rates was not changed. From the Clearfield district on the Penn. R. R. to Atlantic ports, lake ports and certain river points rates for local delivery exceeded those for transshipment by water by from 5 to 46c per ton. HELD, that the proposed increases had not been justified, the question not being one of differentials, but one of the reasonableness per se of the proposed within-the-capes rates. Bituminous Coal Rates to Baltimore and Other Cities, 33 I. C. C., 307.

(jj) When Commission enters upon an investigation of proposed increased rates, the propriety as well as the reasonableness of those rates is in issue. Trancontinental Commodity Rates, 32 I. C. C., 449, 451.

(kk) A proposed revision of general upward tendency that will remove present inequalities as between competing points is entitled to serious consideration as tending to prove the reasonableness of the increased rates Class and Commodity Rates to Salt Lake City, 32 I. C. C., 551, 557

(ll) The Commission considered proposed increased rates on lumber in carloads from Anoka, St. Cloud, Milaca, Park Rapids, Cass Lake, Crookston, Thief River Falls, and Warroad, Minn., and related points, to points on the C. M. & St. P. Ry. in South Dakota west of Mobridge, and in North Dakota. Existing rates from Anoka to Stratton, and McIntosh, S. Dak., and Hettinger, N. Dak., were 27½, 30, and 33c, yielding 13.5, 13.07, and 12.6 mills per ton-mile for distances of 407, 459, and 523 miles; proposed rates 32, 32, and 33½c yielding 15.7, 13.9 and 12.8 mills. Existing rates from Milaca to the same destinations were 29½, 32, and 35c, yielding 15.8, 15.06 and 14.3 mills for distances of 373, 425, and 489 miles; proposed rates 34, 34 and 35½c, yielding 18.2, 16, and 14.5 mills. In comparison from Rapid City, South Dakota to Sioux City, Iowa, distant 423 miles, the rate was 20c; ton-mile earnings 9.4 mills. HELD, that the proposed increased rates had not been justified. Cancellation of Suspended tariffs directed. Rates on Luumber, 32 I. C. C., 494.

(mm) Complainant attacked the action of the carriers hauling from mines in the northern peninsula of Michigan to Ashland, Wis., and Escanaba and Marquette, Mich., in separating their charge on iron ore traffic and applying a 5-cent per gross ton additional charge for dock service, while keeping in effect the old rate, generally 40c, then applied only for the service of assembling and line haul up to dockyard. The bulk of the tonnage of these carriers in the territory involved was ore, moving in one direction only in solid trains averaging 45 cars, 90 per cent of the return movement being empty. The trains made a round trip in from 3.46 to 5.6 days. RATE COMPARISON: for 60.8 miles via the C. & N. W. Ry. to Escanaba and

Ashland, the rate of 45c yielded 7.4 mills per long ton-mile and 6.5 mills per net ton-mile. In the Gogebic district the earnings varied from 11.5 mills to 8.6 mills per long ton-mile. On the haul to Ashland via the M. St. P. & S. Ste. M. Ry. the rate varied from 7.3 mills per long ton-mile on a 61.59 mile haul to 11.5 mills on a 39 mile haul. DOCK SERVICE: including all service rendered from time train of ore was placed in dock-yard, cost on the C. & N. W. route to Ashland 2.29c per ton and to Escanaba 4.83c; on the M. St. P. & S. Ste. Marie Ry., 8.378c; and on the L. S. & I. Ry., 7.-78c. ASSEMBLING SERVICE: including spotting cars above tipple of mine, switching to assembling yard, and laying of stock-pile tracks, cost on the C. & N. W. Ry. haul from the Menominee and Marquette ranges, 1.11c per ton, and from the Gogebic range 1.17c; on the M. St. P. & S. Ste. M. Ry., 3.133c; and on the L. S. & I. Ry., 1.07c. LINE HAUL SERVICE: This included hauling of ore from mine yard to dockyard. On the M. St. P. & S. Ste. M. Ry., this was 2.46 mills per ton-mile or 14.50c per ton; making the total cost of assembling and line haul 3.03 mills per ton-mile or 17.-63c per ton. On the L. S. & I. Ry., the line-haul cost was 7.48c per ton. There had been some increase in cost of labor and materials, but capacity of ore cars had been doubled and tractive power of locomotives tripled since 1898. HISTORY OF ORE RATES. Rates on ore from the Menominee and Marquette ranges to Escanaba via the C. & N. W. Ry. in 1890, 1895, 1900, 1905, and 1913 were as follows: 70, 52, 40, 40 and 45c; while prices of Bessemer ore were for the same years $5.50, $2.90, $5.50, $3.75, and $4.40. HELD that the carriers had justified the increased rates, and that the total charge as published from the mines to the dock pockets was reasonable. Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C., 645.

(nn) The Commission considered proposed increases in the rates on scrap steel and iron from the Mississippi Valley and certain Gulf ports to St. Louis, Mo., Ohio River Crossings, and points beyond. Rates to all destinations were made with relation to the St. Louis rates; existing $2.82, and proposed, $3.50, New Orleans to St. Louis. On the I. C. R. R. and Y. & M. V. R. R. the existing rate of $3.25 applied from Fallon, La., 350 miles north to Gilton, Miss.; and it was proposed to substitute a rate of $3.50 from Fallon for 220 miles north to Goodman, Miss. On the M. & O. R. R. existing and proposed rates from Mobile to St. Louis were the same as from New Orleans. It was proposed to extend the rate of $3.50, applicable from Meridian to Penn, Miss., south to Mobile forming a group 219 miles long. From Artesia, Miss., to Guys, Tenn., a rate of $3.25, involving 25c increase was proposed. The N. O. & N. E. R. R. proposed to increase rates from points on its lines between New Orleans and St. Louis from $3.35 to $3.50. The rate on scrap iron to St. Louis from Atlanta, 611 miles was $4.00; from Athens, Ga. 684 miles, $4.25; from Birmingham, Ala., 475 miles, $3.75. The proposed rate of $3.50 from New Orleans to St. Louis would yield 5.4 mills per ton-mile for 698 miles as compared with rates of $3.20 and $2.10 from Memphis, Tenn., and Duluth, Minn., to Chicago, Ill., yielding 6.0 and 4.4 mills. The average loading of scrap iron was 50,000 lbs, and respondents proposed to increase the minimum from 30,000 to 40,000 lbs. HELD that respondents had justified the proposed increased rates and minimum carload weight on scrap steel and iron. Order of Suspension vacated. Rates on Scrap Iron from Gulf Ports, 33 I. C. C., 668.

(oo) The Commission considered proposed increased reshipping rates on wheat, corn and articles taking the same rates, via the Wabash R. R. from Omaha and South Omaha, Nebr., and Council Bluffs, Ia., to Mexico, Mo., and thence via the C. & A. R. R. to Illinois points; also reshipping rates from the same points of origin to Missouri stations on the main line of the C. & A. R. R. from Blue Springs, Mo. to the Mississippi River, and on the south branch from Mexico, Mo., to the Missouri River. To Illinois points proposed increases were from 9, 10½ and 12c to 15, 15½ and 17c on wheat, and from 8, 9½ and 11c to 13, 18½ and 15c on corn; an average increase of 45 per cent. The existing revenue on corn per ton mile was 4 mills; that proposed, 5.8 mills; compared with 6.69 mills on the 269-mile haul from East Louisiana, Ill., to Chicago. The average distance from Omaha to the Mississippi River crossings was 333⅓ miles, while the distance to East Louisiana, Ill., via the Wabash R. R. and C. & A. R. R. was 355 miles. The proposed increase would prevent the Wabash R. R. from hauling

to Illinois points served by competing carriers, and also exclude Omaha, in competition with Kansas City, from Illinois points served only by the C. & A. R. R., which had its own line from Kansas City. The existing reshipping rates were uniformly 10½ and 9½c on wheat and corn, from either Kansas City or Omaha to the upper Mississippi River crossings, and 9 and 8c to the lower crossings, including Louisiana, Mo. The C. & A. R. R. published joint rates from Kansas City in connection with other lines, on the same basis as its existing joint rates with the Wabash R. R., applicable to Omaha traffic. Proposed joint rates to points in Missouri on the main line from Blue Springs East were graded back from the Illinois points; while to the South branch stations rates were proposed ranging from 3 to 5c above the proportional rate to Mexico. HELD (1) that the proposed increased rates to Illinois stations on the C. & A. R. R. had not been justified; (2) that the joint rates to South branch stations of the C. & A. R. R. were just and reasonable; and (3) that the proposed joint reshipping rates to stations on the C. & A. R. R. from Mexico to Blue Springs, Mo., were lower than the existing combination, and order suspension vacated in that respect. Fourth section application as to Illinois points denied. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590.

(pp) The Commission considered proposed increases from 8 to 10c per 100 lbs., in the rates on stone and marble, not polished, lettered, or figured, from Chicago and Peoria, Ill., to St. Paul, Minn. Protestants attacked the application of the same rate to rough stone as to finished stone as unreasonable and discriminatory. Values at Chicago ranged from $3.50 per ton for marble spawls to $34 for rough imported blocks; sawing or dressing enhanced these values by from $20 to $30 per ton. The rough commodity moved in flat and gondola cars, average weight 70,000 to 80,000 lbs; when finished, in box cars, average weight 36,000 to 40,000 lbs. sawing and dressing resulted in a waste of about 30 per cent. HELD that respondents had justified the proposed increased rate on rough stone and marble, but not on stone or marble sawed or dressed. Order of suspension vacated in part. Rates on Stone and Marble from Chicago and Peoria, 34 I. C. C. 390.

(qq) The Commission considered proposed increase from $2.05 to $2.25 per net ton, in the rate on bituminous coal from points on the S. Ry. in the Belleville district in Illinois to Omaha, Nebr., and points grouped therewith. A rate of $2.05 applied from the Springfield group and $2.40 from Illinois mines south of the Belleville district; and the effect of the $2.05 rate from the latter would be to lower the Springfield rate to $1.85 and that from southern Illinois to $2.20. The rate from Springfield applied over distances of from 456 to 470 miles; the maximum haul under the Belleville rate was 447 miles. HELD that the proposed increased rate was justified; since maintenance of the existing rate would disrupt and depress rates from other fields. Order of suspension vacated. Coal Rates from Illinois Mines to Omaha, 34 I. C. C. 623.

(rr) The Commission considered proposed increases, averaging 1c per 100 lbs., in the rates on lumber from producing regions of the southwest, the Mississippi Valley, and the southeast to St. Louis, East St. Louis, Thebes, Cairo, Memphis, and the Ohio River Crossings. PROPOSED INCREASES FROM THE SOUTHWEST. An increase of 1c was proposed in the blanket rates on yellow pine and cypress to Thebes, Cairo, St. Louis, and East St. Louis, and idential rates on hardwood. The blanket embraced practically all territory between the Arkansas River and the Gulf, and was 400 miles long by 300 miles wide. The average haul therefrom to St. Louis was 565 miles; and the rates to St. Louis and Cairo, 16, and 19c, respectively. During 10 years the net operating income of the southwestern lines had decreased from $45,269,265 to $44,174,782; but their mileage had increased from 24,897 miles to 34,012 miles. HELD that while the southwestern lines were not prosperous, it did not necessarily follow that they should get all or any of their needed additional revenue by an increase in rates. PROPOSED INCREASES IN YELLOW-PINE BLANKET RATES: The existing and proposed rates from the blanket were: to St. Louis and East St. Louis, 19 and 20c; to Thebes and Cairo, 16 and 17c. To these respective destinations the rates proposed would yield an average revenue of 5.741, 5.896, 5.889, and 5.990 mills per ton-mile for distances of 696.69, 678.38, 577.29, and 608.21 miles. The average haul from the blanket was steadily in-

creasing as the center of production moved southward. HELD that the proposed increases were not justified, the fact that the average haul was increasing being no justification for continued increases in the blanket rates. PROPOSED INCREASES FROM LITTLE ROCK AND PINE BLUFF TO MEMPHIS: Little Rock and Pine Bluff had been excluded from the blanket and rates of 10 and 11c on yellow pine prescribed. Respondents proposed to reinstate them in the blanket by raising the rates to 14c. HELD that the proposed rate of 14c from these points to Memphis had not been shown to be reasonable, no reason appearing to warrant a reversal of the former finding. PROPOSED RATES ON HARDWOOD FROM THE YELLOW-PINE BLANKET: Respondents proposed rates of 20 and 17c on shipments to St. Louis and Thebes-Cairo, respectively, from all blanket points south of Malvern, Draughon, and Arkansas City, Ark; and rates 2c lower from points further north. HELD that the proposed rates were not justified, but increase in rates on hardwood to existing rates on yellow pine justified. PROPOSED INCREASES NORTH OF ARKANSAS RIVER: Increases of from 1 to 2c in the rates on all kinds of lumber to St. Louis, East St. Louis, Thebes, and Cairo, from the territory north of the Arkansas River were proposed, the rates being graded in small groups from northern Arkansas south to the river. The following table shows actual weighted average hauls and revenue under the suspended tariffs:

Destination	Number of Cars				Total	Average haul per ton	Average revenue per mile
	1 line	2 lines	3 lines	4 lines		Miles	Mills
St. Louis Proper	1,611	248	6	2	1,867	447.71	7.840
E. St. Louis Proper	268	82	5	0	355	424.14	8.414
Cairo Proper	850	189	17	6	1,062	365.71	8.470
Thebes Proper	164	114	1	0	279	324.95	9.308

HELD that the proposed increases had not been justified. PROPOSED INCREASES K. C. S. RY. POINTS: Increases of one-half cent on yellow pine and 1c on hardwood to St. Louis from stations Siloam Springs to Fort Smith, were proposed. On an average haul of 555 miles the existing 19c rate on pine yielded 6.84 mills per ton-mile. HELD that the proposed rates on yellow pine were not justified. Those on hardwood justified where not in excess of existing pine rates. ROCK ISLAND BASING RATES TO CAIRO, THEBES, and MEMPHIS: From stations on the Memphis branch of the C. R. I. & P. Ry. as far west as Galloway, Ark., there was a proportional rate of 11c to Cairo and Thebes. It was proposed to divide the group by increasing the rate from stations Hazen, Ark., to Galloway to 12c; yielding from 8.19 to 9.16 mills per ton mile for distances of from 257 to 298 miles. The carrier had also increased the rates to Memphis from Cicalla to Round Pond, Ark., and from Becks to Brinkley, Ark., by 1c. HELD that the proposed rates were reasonable. PROPOSED INCREASE ON THE M. & N. A. R. R.: It was proposed to discontinue the Helena, Ark., to Cairo rate of 10c, applied to intermediate stations Weatherby to Searcy, Ark., substituting a rate of 11c. HELD that the proposed increase was justified. CANCELLATION OF CAIRO RATE FROM T. & P. RY. POINTS: The T. & P. Ry. published a rate of 16c on yellow pine in connection with the St. L. I. M. & S. Ry. and the I. C. R. R.; but the latter refused to join in the same rate to Paducah, asserting the injustice of compelling carriers whose lines did not reach Paducah to reduce rates to that point to the Cairo basis. But most of the lumber moving from the blanket to Cairo moved over two or more lines. The T. & P. Ry. cancelled the 16c rate to Cairo. HELD that the T. & P. Ry. had not justified the cancellation of its rate to Cairo. INCREASES IN ROCK ISLAND RATES TO LOUISVILLE AND CINCINNATI: It was proposed to increase the rate to Louisville from stations Walker Spur to Eunice, La., from 21 to 22 1-2c; and to Cincinnati from 23 to 25c. The average distance to Louisville was 580 miles, revenue 7.4 mills per ton-mile; to Cincinnati 695 miles, revenue, 6.9 mills. HELD that the reasonableness of the proposed rates had not been established. PROTEST OF THE C. & E. I. R. R.: The proportional rate on yellow-pine lumber from the blanket area to East

St. Louis was 16c; that via Thebes, in connection with the C. & E. I. R. R. 17c, thus closing the route in which that line participated. HELD that as the proposed increased rate to these gateways had been held unreasonable, the 16c rate must continue as a proportional via all routes. PROPOSED INCREASES IN SOUTH BOUND RATES: Increases averaging 2c were proposed on all kinds of lumber shipped to New Orleans from Missouri and Arkansas points. From Poplar Bluff, Mo., and Earle and Little Rock, Ark., the existing rates of 17, 15, and 15c yielded 5.1, 5.6, and 6.2 mills per ton mile for distances of 665, 534, and 486 miles; proposed rates of 19, 17, and 17c would yield 5.7, 5.6, and 7.0 mills. HELD that the reasonableness of the proposed southbound rates was not established. PROPOSED INCREASES FROM TERRITORY EAST OF MISSISSIPPI RIVER: It was proposed to increase by 1c the rates on lumber from Mississippi, Alabama, Georgia, Florida, and Tennessee to Memphis, St. Louis, Cairo, and north bank Ohio River crossings, to cover the bridge tolls at the crossings. Tolls on through traffic ranged from 1 to 2c. The northern lines had made rates from south-bank points 1c higher than from north-bank points, so that the southern lines could not equalize all the crossings by uniform absorptions. HELD that the 1c increase was justified, where necessary to effect a spread of 1c between opposite crossings. PROPOSED INCREASES FROM MISSISSIPPI VALLEY TERRITORY: These applied on hardwood, including cottonwood and gum, as well as on pine lumber. The proposed increases from group 1 in southern Mississippi and Louisiana were: 1c to St. Louis, Cairo, and Cincinnati; one-half cent to Henderson, Evansville, Owensboro, and Louisville. From Memphis, except on cottonwood and gum: 1c to Cairo, Brookport, Metropolis, and Cincinnati; one-half cent to St. Louis, Henderson, Owensboro, New Albany, and Louisville; 1 1-2c to Evansville. From group 9, in the "Delta" section, one-half cent to St. Louis, Henderson, Owensboro, and Louisville; 1c to Cairo, Brookport, Metropolis, and Cincinnati; 1 1-2c to Evansville and New Albany. From group 7, in the "delta": 1c to Cairo, Brookport, Metropolis, and Cincinnati; 1 1-2c to Henderson, Owensboro, and Louisville; 2 1-2c to Evansville and New Albany. HELD that the proposed rates to north bank points were reasonable to the extent they did not exceed existing south bank rates by more than 1c. Where a spread of 1c or more between opposite points existed, no increases permitted. RATES ON HARDWOOD OTHER THAN COTTONWOOD AND GUM: Existing rates from group 7 to St. Louis, Cairo, East Cairo, Evansville, New Albany, Louisville, and Cincinnati were 15, 13, 13, 15, 15, 15, and 18c; proposed rates, 15½, 14, 13, 17½, 17½, 16½, and 19c. From group 9 to the same points existing rates were 15, 13, 13, 15, 15, 15, and 18c; proposed rates, 15 1-2, 14, 13, 16 1-2, 16 1-2, 15 1-2, and 19c. The average distance to all the crossings from Charleston, Miss. a representative producing point, 452 miles, the average rate 15.5c, and revenue per ton-mile, 6.9 mills. Hardwood growing principally along waterways the rates had been depressed by water competition more than pine rates. HELD that the rates to Ohio River north bank points and to St. Louis and East St. Louis were reasonable to the extent they did not exceed by more than 1c the existing rates. INCREASES FROM POINTS ON THE S. RY. IN MISSISSIPPI: Increases to north bank points of from one-half cent to 2 1-2c were proposed, existing rates to points opposite banks being generally the same. An increase, from 10 to 14c was proposed on cottonwood and gum shipped to Cario. The company had not been a financial success. HELD that the rates proposed were reasonable to the extent they did not exceed existing rates by more than 1c. Cottonwood and gum might be increased to the same basis as other hardwood. RATES FROM MEMPHIS, TENN.: The rate situation from Memphis to Ohio River crossings and St. Louis was as follows: (See page 80).

HELD that increases not exceeding 1c might be made to north bank points where the rates thereto were not already higher by 1c to opposite points. RATES FROM MEMPHIS AND HELENA TO THE WEST: It was proposed to increase by from 1 to 2c the rates to points in Iowa, Minnesota, Missouri, and other states west of the Mississippi River. HELD that the proposed rates were not justified; except those on hardwood, allowed to the extent they did not exceed yellow pine rates. PROPOSED INCREASES ON GUM AND COTTON-

From Memphis, Tenn., to	Pine Lumber		Cottonwood and Gum		Other Kinds of Lumber	
	Present	Proposed	Present	Proposed	Present	Proposed
St. Louis, Mo.	12	12½	10	12½	12	12½
E. St. Louis, Ill	12	12½	10	12½	12	12½
Cairo, Ill.	10	11	10	11	10	11
Paducah, Ky.	10	10	10	10	10	10
Evansville, Ind.	11	12½	10	12½	11	12½
Owensboro, Ky.	12	12½	10	12½	12	12½
New Albany, Ind.	13	13½	11	13½	13	13½
Louisville, Ky.	12	12½	10	12½	12	12½
Cincinnati, Ohio	15	16	13	16	15	16

WOOD: It was proposed to raise these to the level of other hardwoods, necessitating increases ranging up to 40 per cent. Increases on gum from the "delta" section ranged from 2 1-2c to St. Louis to 4 1-2c to Evansville. Gum had been considered almost valueless owing to its tendency to warp; but the prejudice against it had been largely overcome, though the European war had temporarily reduced the demand. Different qualities of lumber taken from the same tree varied in value from $23.60 to $7.60 per 1,000 ft. The log run value in normal times averaged over 16 dollars. It did not load as heavily as other hardwoods. HELD that the proposed rates were reasonable to the extent that rates on other hardwood were observed as maxima. Neither cottonwood nor gum were entitled to special rates. INCREASES FROM POINTS ON THE A. G. S. AND N. O. & N. E. RAILROADS: These varied from 1-2 to 1c. Except at Cairo and Cincinnati crossings there already existed a spread of at least 1c between north and south bank points. HELD that where such spread existed no increases to north bank points could be permitted. PROPOSED INCREASES FROM CHATTANOOGA, TENN. It was proposed to increase the rate to all north bank points 14c, and to south bank points, 13c. To have accomplished the spread by reductions to south bank points would have compelled reductions to intermediate points. HELD that the proposed rates were reasonable. INCREASES FROM POINTS ON THE N. C. & ST. L. RY: It was proposed to increase by 1c the rates to Evansville, Cincinnati, Cairo, and St. Louis. Much of the territory served was mountainous and sparsely settled, and many branch lines depended principally on forest products. HELD that the proposed increase of 1c was reasonable. INCREASES FROM POINTS ON THE SOUTHERN RY: Increases were proposed from points on the Memphis division, the Knoxville division, and the pine-producing area south of Chattanooga. Distances to the Ohio River crossings from points on the Memphis division were from 50 to 100 per cent greater than by the more direct routes. From points on the Knoxville division the increases in no case exceeded 1c. From points on the Mobile division they were the same as from points on the M. & O. R. R. HELD that the proposed rates to Ohio River north bank points were not unreasonable to the extent they did not exceed by more than 1c the existing rates to south bank points.

INCREASES FROM POINTS ON THE C. OF G. RY.: A uniform advance of 1c to most north bank points was proposed, both from main-line and branch-line points of origin. The proposed rates to Cairo, Ill. from Albany, Augusta, and Savannah, Ga., were 23c, for distances of 590, 755, and 781 miles, yielding 7.80 6.09, and 5.89 mills per ton-mile. HELD that the proposed rates were not unreasonable where they did not exceed the rates to south bank points by more than 1c. INCREASES FROM A. C. L. R. R. POINTS: Distances to the Ohio River crossings varied from 550 to 800 miles; and rates proposed, from 22 to 24c, the average ton-mile revenue being 6 mills. HELD that the proposed rates were reasonable to the extent that they did not exceed existing rates by more than 1c. INCREASES FROM L. & N. R. R. POINTS: The existing rate from stations Oakworth to Montgomery, Ala., was 21c to Cincinnati, Covington, and Newport. It was proposed to increase the rate to Cincinnati to 22c, so as to effect a spread in favor of the other points. A similar spread was proposed on shipments from Memphis to the same destinations by raising the Cincinnati rate

from 15 to 16c; and on shipments from Nashville by raising the Cincinnati rate from 13 to 14c. HELD that rates to north bank points might be made 1c higher than to opposite south bank points. RATES PROPOSED BY ST. L. & S. F. R. R.: This railroad operated a line from Birmingham to Memphis, which was intersected by several north and south lines which fixed the rates to St. Louis, East St. Louis and the Ohio River crossings. HELD that the rates proposed were reasonable to the extent that increases did not exceed those allowed in rates from the junction points. INCREASES FROM WEST SIDE LINES TO OHIO RIVER CROSSINGS: These were arbitraries of from 1 to 3c, over the rates accorded by the east side lines. HELD that the arbitraries were reasonable, and might be applied to the extent that east side increases were approved. INCREASES IN EASTBOUND RATES FROM CINCINNATI: To points in trunk-line territory over 500 miles east of Cincinnati, rates from Cincinnati were 3 1-2c below Louisville rates. To comply with the holding in Norman Lum. Co. v. L. & N. R. R., 29 I. C. C. 565, that the spread should not exceed 2 1-2c the carriers added 2 1-2c to the Cincinnati rate to arrive at that from Louisville; but in the meantime by authority of the Five Per Cent Case they had already added 5 per cent to the Cincinnati rate. HELD that the rates on lumber in carloads from Cincinnati to western termini and points in trunk line territory should not exceed the rates as increased in consequence of the Five Per Cent Case. Rates on Lumber from Southern Points, 34 I. C. C. 652.

(ss) In Northbound Rates on Hardwood 32 I. C. C. 521, the Commission held that respondents had justified certain increased rates on hardwood from southwestern points to northern destinations. On reargument based thereon and on the record in Rates on Lumber from Southern Points, 34 I. C. C. 652, it appeared that while the average haul on hardwood from the yellow-pine blanket was much less than the haul on yellow pine, there was an even greater difference in the hauls of yellow pine from mills in the northern and southern portions of the blanket. HELD that the conclusions expressed in Northbound Rates on Hardwood, 32 I. C. C. 521, should not be changed. Northbound Rates on Hardwood, 34 I. C. C. 708.

(tt) The Commission considered proposed increases in carload rates on ice from various points on the D. L. & W. R. R. in New Jersey and eastern Pennsylvania to points in New Jersey on the N. Y. & L. B. R. R.; as well as protestant's attack upon the rates from Tobyhanna, Pa., to Atlantic Highlands, Highlands, Highland Beach, and Seabright, N. J., on the seashore branch of the C. R. R. of N. J. as unreasonable and discriminatory. The existing rates from Tobyhanna, a typical point of origin, to points on the N. Y. & L. B. R. R., Long Branch to Ocean Grove, inclusive, were $1.25 on shipments in box cars, $1.40 on shipments by special equipment; to points, Bradley Beach to Point Pleasant, $1.50 in box cars, $1.65 by special equipment. Rates of $1.60 on all shipments to the first group, and on shipments in box cars to the second group were proposed. Higher rates were charged to points on the seashore branch of the C. R. R. of N. J. than to equidistant points on the N. Y. & L. B. R. R. HELD (1) proposed increases in carload rates on ice from points in New Jersey and eastern Pennsylvania on the D. L. & W. R. R. to points in New Jersey on the N. Y. & L. B. R. R., not justified, and schedules cancelled; (2) rates from Tobyhanna, Pa., to points on the seashore branch of C. Ry. of N. J., held unreasonable to the extent they exceeded $1.32 per ton in box cars and $1.48 in ice cars. Reparation denied; (3) fourth section application denied. Ice Rates to Long Branch, 35 I. C. C. 73.

§18 Circumstances and Conditions.

See Evidence II.

(½) In General.

(a) Duty to justify advanced rates includes relative reasonableness as well as reasonableness per se of the rates. Transcontinental Commodity Rates,32 I. C. C. 449, 452.

(3) Heavy and Uniform Tonnage.

(a) Minimum increase of 5c per ton on commodities moving at less than $1.00 per ton would cast upon heavy short-haul traffic a disproportionate burden. Five Per Cent Case, 31 I. C. C. 351, 403.

§18. (4) Low-Grade Commodity.

See Evidence §61.

(a) The Commission considered a proposed increase of 15c per ton in the rates on crushed stone from Port Deposit, Md., Devault, Pa., and producing points in

other states, to consuming points in Maryland and Delaware, average of all the distances being 157.5 miles; existing rate, 95.2c, yielding a per-ton-mile revenue of 6.14 mills; as compared with which the average proposed rate of 110.2c would yield a per-ton-mile revenue of 7.14 mills. In 1908, Maryland entered upon a scheme of extensive road improvement, and there being no stone suitable for road-making in the "Eastern Shore" (Md.) territory, and the existing rates not permitting competition with shell, lower rates were accorded by respondents at the request of the State Roads Commission, the more readily as they had many cars idle as a result of the business depression of 1907. Subsequent to such reduction in rates there had been a continuous heavy movement of road stone into Eastern Shore territory from the producing points in question, and conditions indicated that future movement would be still heavier. The return loading of the cars, however, is light. Road stone is a very low-grade commodity, is shipped in gondola or hopper cars, requires only ordinary transportation equipment, and is free from claims for damage in transit. Its value ranges from 60c to 70c per ton at the quarry. The average present rate is 80c, and the average per-ton-mile revenue 6.62 mills. The average of the proposed rates is 95c, and the average per-ton-mile revenue 7.91c. From the Devault District to a number of the same destination points the average distance is 168.2 miles, the average present rate 97.8c, and per-ton-mile revenue 5.86 mills. The average of the proposed rates is 112.8c, and the average ton-mile revenue 6.68 mills. The car minimum was 50,000 lbs., under existing rates, yielding a per-car-mile revenue of 15.35c; the average load 60,000 lbs., yielding a per-car-mile revenue of 18.42c. The average earnings per-ton-mile on road stone of the three principal carriers respondent, on hauls longer than their average hauls, were nearly as great for the year 1913 as their average per-ton-mile earnings on all commodities. Nor were rates abnormally low as compared with rates on like traffic via other lines for substantially similar hauls in nearby territory. HELD, that under present rates, the traffic is bearing at least its just proportion of the burden of operating cost. Advance denied. Reparation awarded on shipments under increased rates. Rates on Crushed Stone, 30 I. C. C. 22.

(b) The Commission considered a proposed increase in the rate of 50c per gross ton (2½c per 100 lbs.), yielding a per-ton-mile revenue of 12.53c, on shipments of scrap iron between Milwaukee and Chicago, a distance of 84 miles. It was proposed to increase the rate to 70c per ton. Scrap iron is a very low-grade commodity, loading heavily, the average carload being 86,150 lbs., gross earnings per car $10.70. A rate of 50c per gross ton was maintained on pig iron, steel rails, ingots and rolling mill products, 45c on coke, and 60c on coal; but these commodities were more affected by water competition than was scrap iron. In Scrap Iron Rates, 28 I. C. C. 467, the Commission permitted an increase on scrap iron between St. Paul and Chicago, a distance of 400 miles, from 8c to 10c per 100 lbs. HELD, that respondent had not fully justified the rate proposed, but that the existing rate was too low. A rate of 3c per 100 lbs. (60c per ton) declared just and reasonable. Scrap Iron Rates Between Chicago and Milwaukee, 28 I. C. C. 525.

§18. (5) Ratio of Rate to Value.

(a) Brooms, as a manufactured article, should in accordance with accepted principles, pay a rate higher than broom corn, which is a raw material. Broom Rates to Colorado Points, 28 I. C. C. 310, 311.

(7) Rates in Like Territory.

See Competitive Rates; Relative Rates.

(a) It cannot be said that merely because a higher intrastate rate exists an increase of an interstate rate to meet the state-made rate is justified, even though transportation conditions as to distance and territory are similar. Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545.

(b) Elimination of certain inconsistencies in rate structure; placing of two competing points upon equal basis; rates in both directions should be same. Packing-House Products from Iowa Points, 31 I. C. C. 308, 309.

(c) The Commission investigated advanced rates on blackstrap molasses, C. L., from Louisiana points to Kansas City, St. Joseph, Tarkio, Corning and Fairfax, Mo., Omaha and South Omaha, Neb., Leavenworth and Atchison, Kas. and Council Bluffs, Clinton, Lyons and Davenport, Ia; the existing rates ranging from

27½c to 29c, being increased to the regular molasses rate, 1½c to 3c higher. Objection was also made to the provision in the tariffs by which the capacity of the tank cars, in which blackstrap is shipped, was made the minimum weight. Blackstrap is the residue after the extraction from sugar cane of sugar and molasses. It is used largely in feeding livestock and to some extent as an ingredient of food for man. It is a matter of dispute whether it can readily be distinguished from other grades of molasses. It is carried in tank cars generally owned by the shippers. In Molasses Rates to Knoxville, Tenn., 30 I. C. C., 613, while the Commission declined to say that blackstrap should always take the same rate as other kinds of molasses and syrup generally, it was held that the existing commodity rate of 33c, which was applicable to all other grades of molasses was reasonable. In Molasses rates from Mobile, Ala., 28 I. C. C. 666, the Commission recognized the right of carriers there involved to make a distinction between blackstrap and other grades of molasses in the direction of a reduction in the rate on blackstrap. HELD, no satisfactory reason appearing why, in so far as the traffic involved is concerned, blackstrap should not take the rate applicable to all other grades of molasses. The proposed increases allowed. Rates on Blackstrap Molasses, 32 I. C. C., 176.

V. DISCRIMINATION THROUGH ADVANCE.

See Discrimination.

§19. In General.

(a) Where an increase in rates may operate to create or increase a discrimination, it is not always necessary to inquire in passing upon the propriety of the increase whether the discrimination be undue; but where the relation has not been changed and where the discrimination, if one previously existed, has not been intensified, that question does not properly arise upon the justification of the increase. The party claiming to rest under such discrimination should file his complaint in due form, thereby bringing to the attention of interested carriers and other parties the exact question for consideration. Grain Rates in Central Freight Association Territory, 28 I. C. C. 549, 557.

(b) When an increase in rates may operate or create or increase a discrimination, it is always necessary to inquire in passing upon the propriety of the increase whether the discrimination be undue. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 557.

(c) Respondent proposed increases in the local and proportional rates on flaxseed from Minneapolis to Fredonia, Kan., and adjacent points. The existing proportional rate from Minneapolis to Kansas City on flaxseed originating beyond Minneapolis was 10½c, the flat rate on local traffic, 14c, while both proportional and flat rates to Fredonia were 15c. Respondents proposed to increase the proportional and flat rates to Kansas City to 16½c and 23½c, respectively, and to discontinue the through rate to Fredonia, thus applying to Fredonia a combination on Kansas City of 26½c. Most of the flaxseed moved under proportional rates. The largest production of flaxseed was in the Dakotas and Montana; and protestant, who operated a crusher at Fredonia, was, owing to the competition of Minneapolis, Chicago and St. Louis crushers for Kansas seed, compelled to rely largely upon Northwestern flax, purchased in the Minneapolis market. Chicago, St. Louis, Kansas City and Fredonia were, respectively, 408, 586, 540 and 693 miles from Minneapolis. The rates from Minneapolis to Chicago and St. Louis had been increased from 7½c to 10c and from 10½c to 14c, respectively; but the former rates had been abnormally low as compared with rates on wheat, and the increases were merely to the wheat rates. The proposed rates to Kansas City and Fredonia would be in excess of wheat rates to those destinations, as well as higher per ton mile than those on flaxseed to Chicago, and respondent contended that the general level of rates from Minneapolis to the Missouri River is higher than that of rates to Chicago and St. Louis, and that the proposed increases were in conformity with increases made from Minneapolis to the territory in question on linseed oil, oil cake and oil meal. The price of flaxseed has uniformly been higher than that of wheat. HELD, that the rates on flaxseed from Minneapolis to the various consuming markets should bear a consistent relationship to one another and to the rates on wheat and other grain, and that the rates under suspension were discriminatory to the extent they exceeded the wheat rates. Carriers may establish rates no higher than those on wheat to the same points; thus the rate from Minneapolis to Kansas City

may be increased from 10½c to 15¾c, and the rate to Fredonia from 15c to 20½c. No distinction should be made between flaxseed coming from Minneapolis proper and that coming from points beyond. Rates on Flaxseed, Minneapolis to Fredonia, Kan., 29 I. C. C. 633.

(d) Where increased rates are permitted to become effective after investigation by the Commission, and by reason of such increased rates a condition of undue discrimination is found to exist, the shipper may proceed by complaint to the Commission as in any other case. Rates on Poultry in Western Trunk Line Territory, 32 I. C. C., 380, 383.

(e) The Commission considered proposed increased charges on bituminous coal and coke in carloads from mines in Ohio, Pennsylvania, Virginia and West Virginia to C. & N. W. Ry. stations, viz., Peterson Ave., Crawford Ave., Weber St., and Greenwood St., all in Chicago, Ill. These stations, on the "Mayfair Cut-off" which extended from Mayfair station in Chicago to Evanston, Ill., were respectively 2, 2.7, 5.1, and 6.1 miles from Mayfair. Chicago rates under both existing and proposed tariffs apply to Mayfair, but the proposed tariff would cancel existing provisions applying the Chicago rates to the named destinations and apply to each the full local rate of 40c from Chicago, so that, allowance being made for the same absorbed by the eastern carriers, the charges would be increased by 25c to 30c a ton. HELD, that respondents had not justified the proposed rates, but that, following Gilmore & Co. v. C. & N. W. Ry. Co., 25 I. C. C., 403, the rates to Peterson Ave. and Crawford Ave. may reasonably exceed the rates to Chicago by 5c per net ton, minimum $2.00 per car, and to Weber St. and Greenwood St. by 10c per net ton, minimum $4.00 per car. Switching Charges on Coke and Coal, 32 I. C. C., 444.

(f) The propriety of proposed rates involves the question whether their becoming effective will subject the points directly affected to unjust discrimination in favor of any other points. Transcontinental Commodity Rates, 32 I. C. C., 449. 452.

(g) The Commission considered the proposed cancellation of certain intrastate basing rates used as interstate factors on traffic moving between New Orleans, Baton Rouge, and Port Chalmette, La., and various points on respondents' lines in Louisiana, and the substitution of higher rates. Between New Orleans and Milton, 145 miles, for instance, the existing first class rate was 57c; proposed 62c. First class rates via the S. P. Co. from New Orleans to Boutte, Franklin, Sabine River, and Alexandria were 20, 39, 56, and 60c; for distances of 25, 102, 252, and 231 miles. From New Orleans via the St. L. & S. F. Ry. to New Iberia, Opeleusas, and Eunice, for distances of 125, 149, and 170 miles, the existing rates were 39, 46, and 48c; proposed rates, 59, 63, and 67c. HELD without deciding whether the proposed rates were per se reasonable or unreasonable, that their propriety had not been justified. If allowed to become effective while lower rates applied on state traffic between the Louisiana points involved, unjust discrimination would result. Cancellation of suspended schedules directed. Interstate Class and Commodity Rates in Louisiana, 33 I. C. C. 626.

VI. REMEDIES AND PROCEDURE.

See Claims, §1 (a); Discrimination, §1 (f), §18 (a).

§19½. In General.

(a) When an increased rate which has gone into effect is subsequently attacked by complaint, the complaint, as well as the Act, must be considered to fix the issues. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 421.

(b) The filing and serving of a formal complaint against proposed increased rates does not relieve carriers of the burden of proof imposed upon them by law. Transcontinental Commodity Rates, 32 I. C. C., 449, 452.

(c) Where a suspended tariff proposes an increase in the rate itself and carries provisions as to the carload minimum weight the same as in the tariff already in effect, the Commission will not consider in the I. & S. proceedings any question as to this carload minimum. Rates on Blackstrap Molasses, 32 I. C. C., 176, 177.

(d) Where it is proposed to increase the spread between grain and grain products, if there is no movement of grain to the destinations involved and no mills at those points, there is in issue only the question whether the rates on grain products will be reasonable rates. Proportional Rates on

Grain Products from Omaha, 33 I. C. C., 621, 624.

§21 Investigation.

(a) Where the Commission is charged with the duty of determining generally whether the railroads in a certain classification territory are in need of additional revenues, and, if so, how this shall be secured, and whether increased freight rates proposed are just and reasonable, the questions involve the exercise of quasi-judicial functions, and the law requires the Commission to afford all parties an ample opportunity to introduce evidence and to be heard in support of their objections to the additional burdens upon their traffic proposed by the carriers. The law also requires the Commission to supplement the evidence so introduced by such further investigations as the importance and complexity of the questions may suggest. The Five Per Cent Rate Case, 31 I. C. C. 351, 425.

(b) The Commission is under the express statutory obligation of affording a full hearing where increased rates are proposed, to all who desire to be heard and have reasonable grounds for a hearing. The Five Per Cent Case, 31 I. C. C. 351, 426.

(c) Where a suspended tariff proposes an increase in the rate itself and carries provisions as to the carload minimum weight the same as in the tariff already in effect, the Commission will not consider in the I. & S. proceedings any question as to this carload minimum Rates on Blackstrap Molasses, 32 I. C C., 176, 177.

ADVERTISING.

(a) Rule in Western and Official Classifications prescribing basis for charges upon packages containing premiums not found unreasonable. Minneapolis Cereal Co. v. C. & N. W. Ry. Co., 28 I. C. C. 415.

(b) To be able to ship premiums in packages is a privilege of value to the shipper. Minneapolis Cereal Co. v. C. & N. W. Ry. Co., 28 I. C. C. 415, 417.

AGENCY

See Crimes, §15; Foreign Commerce, §½ (a); Loss and Damage, §7 (b), §11 (c); Passenger Fares and Facilities, §14 (c); Tariffs, §3 (2) (f).

AGREEMENTS

See Evidence, §3; Loss and Damage, §9; Divisions, III; Reparation, §17 (a) (b) (c); Special Contracts.

ALASKA.

CROSS REFERENCES

See Adjacent Foreign Country; Through Routes and Joint Rates, §13½ (q).

(a) Factor of through rate on l. c. l. shipment of dry-goods from Seattle, Wash., to Ketchikan, Alaska, higher than local rates caused by rate wars between ocean carriers, not found unreasonable. Fleischner, Mayer & Co. v. N. P. Ry. Co., Unrep. Op. A-889.

ALLOWANCES.

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CROSS REFERENCES

See Compress Companies and Charges, (d); Crimes, §7 (b); Evidence, §17 (f); Divisions; Interstate Commerce, §4 (i); Lighterage, III; Special Rates and Services, (a); Tap Lines, §2 (b), (c), §7 (j), §9; Terminal Facilities, §9.

I. CONTROL AND REGULATION.

See Commerce Court, §2 (a); Control and Regulation.

§2. Power to Prescribe.

(a) The Commission possesses jurisdiction to put an end to abuses arising from free services and allowances accorded industrial plants by line carriers. Industrial Railways Case, 29 I. C. C., 212, 243.

(b) The Commission cannot compel trunk line to make allowances to industry, under section 15, for services rendered by industrial line. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101.

(c) Commission has no jurisdiction to require commercial elevation. Milwaukee Maltsters' Traffic Assn. v. G. T. W. Ry. Co., 28 I. C. C. 489, 491.

(d) The Commission may not with propriety fix by order a maximum amount that should be paid the shipper by a carrier for labor performed and for materials furnished by him in installing grain doors or doing other incidental repair work on cars furnished for shipments of grain in bulk. If, however, a carrier makes any allowance to shippers at country stations for work done, or materials furnished, the conditions and purposes as well as the maximum allowance must be stated in its tariff and must be applied without discrimination. Farmers' Cooperative Asso. v. C. B. & Q. R. R., 34 I. C. C., 60, 65.

III. DISCRIMINATION.

See Discrimination.

§7. Obligation to Treat All Alike.

(a) If $6 is a reasonable allowance to consignor for loading cars at New Orleans, the Commission is not convinced that the allowance of $10 at Galveston is not excessive. Rates on Bananas from Gulf Ports, 30 I. C. C., 510, 523.

§8. Particular Allowances.

(½) Car Ferry.

See Car Ferries.

(a) The Commission investigated the cancellation via the D. & M. Ry. and the M. C. R. R. of certain car ferry allowances to the protestant, who, for nine years, had been manufacturing lumber and forest products at Cheboygan, and for six years receiving such allowances. His plant is on the east side of the Cheboygan River and the respondent lines run to the west bank. The carrier provided allowances of $5 a car on lumber and $3.75 a car on forest products, including bark, cooperage stock (staves, headings and hoops), hoop poles, hop poles, lath, paving blocks, pivots, piles, posts, shingles, trap-net stakes and railroad ties, loaded in or on cars and delivered by car ferry to the respondents either for carriage to Bay City, in the same state, or to points beyond. These allowances were meant to be payable to the protestant only, as he alone was so situated as to be able to receive them. In the beginning the protestant used a lighter for moving his mill products across the river; later he equipped himself, in compliance with the changes in the tariffs above described, with a car ferry having capacity for two cars. This boat is pulled back and forth across the river, a distance of 350 feet, by means of a cable lying on the bed of the river and a steam engine on the boat. The protestant owns the equipment, and in its erection and maintenance he has expended approximately $5,000. At his expense he built the approaches and connections with the rails of the respondents. The maintenance and operation of the car ferry have cost him more than the amount of the allowances received by him. The tracks on his own side of the river are owned by the protestant and are on his land; the cars are handled on that side by horses; the tracks on the west side of the river are owned jointly by the carriers, although they are on land owned by the protestant and by him

leased to the carriers; on that side the cars are handled by a steam hoist. Besides the use made of the latter tracks for the protestant's traffic, they are put to other uses by the respondents. The protestant publishes no tariff and makes no report to any public officer respecting the operation of his car ferry. He has a competitor operating a sawmill on the west side of the river with a plant reached directly by the railroads; the allowances do not put the protestant on a shipping equality with this mill. Ninety-five per cent of his traffic moves by water, and he uses the railroads chiefly for shipments to inland points, to which the shipments must necessarily move by rail or not at all. Since 1909 some 2,763 carloads of lumber and forest products of the kind designated in the tariffs, 651 carloads of forest products not specifically named in tariffs, and 46 carloads of steel rails and hay have been transported across the river by the protestant. HELD, considered most favorably to protestant's contentions, upon the assumption that such payment may lawfully be made, these allowances would still at best be nothing more than a venture by respondents in traffic policy or expediency to meet water competition and increase their business They were voluntarily paid by respondents to effect a business gain for them; they resulted, so far as protestant is concerned, relieving him of an expense which otherwise he would have been compelled to meet as a part of the cost of carrying his products to the point where rail facilities were available. Accordingly, the payment of these allowances was subject to be discontinued within the desire and discretion of the carriers in contemplation of their own interests and profits. Car-Ferry Allowance at Cheboygan, Mich., 32 I. C. C. 578, 581.

(b) Allowances increased upon showing that an increased service was performed, and upon showing of extension of track to another junction, allowances were fixed through new gateway. Tap Line Case, 31 I. C. C., 490, 493, 494.

§8. (2) Cooperage and Grain Doors.

(a) Reparation awarded on basis of tariff in effect granting allowance for furnishing grain doors upon shipments of malt. Northern Malt Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A123.

(b) Complainant attacked the legality of regulations and practices in Western New York with respect to car fittings used in connection with shipments in bulk of grain, potatoes and other produce to North Atlantic ports, Pittsburgh, and points taking the same rates. The rules and practices of carriers engaged in this traffic are substantially identical, and conform to those generally in force throughout the country. Grain doors are supplied by the carriers, or shipper furnishing them reimbursed for their actual cost not exceeding $2 per car. Inside or extra doors are furnished to shippers. A maximum allowance of $2 is also made on bulkheads. The latter practice is not so widely extended throughout the country as that of supplying inside doors; and to that extent New York shippers have an advantage over other shippers. In practice, on winter shipments the shipper lines the car where required, and constructs bulkheads, to provide a free space for the stove between the doors. If refrigerator or produce cars are used the stove is removed as soon as the car is heated, which is then sealed and sent on its way. Where box cars are used the stove remains and an attendant is necessary. No extra charge is made for the use of produce or refrigerator cars, and an allowance of 1,000 pounds per car is made for weight of linings. The average cost of properly lining a car, borne by the shipper, is $13. Defendant's rates are the same throughout the year, and apply on these articles in packages as well as in bulk; and where packages are used no bulkheads or linings are required. Western New York shippers compete with shippers of potatoes from Maine, Michigan, Wisconsin and Minnesota. Shipments from Maine pay charges for heater service of $14.40 per car for 400 miles and $25.20 for 700 miles. Minnesota and Wisconsin shippers may elect between a protected service in special equipment at carrier's risk for weather damages, or at a lower rate and at their own risk may furnish their own protection. HELD, that shippers from Western New York are not subjected to greater total expense for moving the mentioned products in winter than is borne by shippers from Maine, and are at least upon an equal footing with Minnesota and Wisconsin shippers. Complaint dismissed. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437.

(c) Where special reasons have induced railroads to furnish, upon certain terms, certain car fittings for winter

transportation, the presumption is that the rates are maintained with respect thereto. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 438.

(d) Ever since grain has been shipped in bulk shippers have been required to place the grain doors. Such a requirement is not unreasonable. It is an incident of loading and should properly be performed by the shipper. Farmers' Cooperative Asso. v. C. B. & Q. R. R., 34 I. C. C., 60, 65.

(e) The amount and character of the material furnished shippers for grain doors and for incidental coopering and repairing should be uniform and adequate for the purpose; just what will be furnished should be clearly stated in tariffs. It is manifest that if a carrier furnishes nothing but loose boards at one point and at another point furnishes sectional doors, lath, paper, or burlap, unlawful discrimination results. Farmers' Cooperative Asso. v. C. B. & Q. R. R., 34 I. C. C., 60, 65.

§8. (2½) Dunnage.

(a) Failure to allow 500 lbs. for dunnage on shipments of automobiles from San Francisco, Cal., to Toledo, O., found unjustly discriminatory. Reparation awarded, and order entered establishing such allowance. Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A121.

(b) For loading and unloading and for all other special services performed by it apart from conveyance, the carrier may properly make a reasonable charge, since they are not accessorial parts of the transportation which section 1 requires the carrier to furnish. If the placing of blocks, braces, supports, and like materials in lieu of packing, crating, or boxing of individual units of carload shipment is essential for the safe transportation of the loads, the materials should be furnished and placed by the shipper. And since the substitution of dunnage for the more expensive boxes and crates is of advantage to the shipper and reduces the gross weight upon which freight charges must be paid, the carrier should receive freight for the total weight hauled. Dunnage Allowances, 30 I. C. C. 538, 543.

(c) By schedules respondents sought to cancel from tariffs to points in southwestern territory provisions for a 500-pound dunnage allowance on shipments in closed cars. This allowance is of comparatively recent origin in Western Classification territory. Practice differs in the various parts of the country, some tariffs allowing 500 to 1,000 pounds on traffic in both open and closed cars, some as to open only, others as to closed cars only, and still others making no allowance. Protestants represented manufacturers and shippers of automobiles and parts, agricultural implements, wire rope and cables, starch, and lard pails. The practice of dunning shipments of these articles is more expensive to the shipper but is attended with less risk and expense to the carrier. Small automobiles are shipped double-decked, the shipper furnishing the double decks and bracing materials, the expense of which and freight charges thereon being assessed against the consignee and eventually paid by the consumer. The use of dunnage is less expensive for the shipper than complete crating or the use of two cars. And the use of single-deck cars would result in serious car shortages at automobile factories. Crated automobiles are unwieldy, though export shipments are so packed. In the loading of agricultural implements, much of the dunnage is designed to increase weight of load or to separate lots for partial loading or unloading; and only by its use can cars be made to hold the minimum loads prescribed by tariffs or classifications. Though completely boxed for export trade, their bulk and weight precludes such packing of domestic shipments, frequently handled from or to cars by but one or two men. HELD, that respondents have adequately borne the burden cast upon them, and that the cancellation should be permitted to become effective. Dunnage Allowances, 30 I. C. C. 538.

(d) Many of the expenses for dunnage are due to the inability of the carrier to furnish the kind of car desired by the shipper, who, rather than wait for the car he wants, accepts the less desirable car and goes to the expense of fitting it up; but when the more desirable car, i. e., box, stock or other closed car, is furnished, no expense of fitting need be incurred, except in consequence of conditions for which the carrier is not responsible. Dunnage Allowances, 30 I. C. C. 538, 545.

(e) If shippers elect to dispense with

the use of boxes, crates, and other packing which might be available for further use, and upon the full weight of which the carriers would receive freight charges, the carrier offering equipment which would otherwise adequately take care of the shipment is entitled to revenue for the gross weight transported. Dunnage Allowances, 30 I. C. C. 538, 545.

(f) Not all discrimination is unlawful and neither the fact that in the event a cancellation of dunnage allowances is permitted, shipments in closed cars to territory covered by the schedules in controversy will be excluded from the benefits of such allowance, while traffic in other territory served by the respondents and other carriers will have such benefit, nor the fact that traffic in closed cars will be subject to different treatment than traffic in open cars, will effect such discrimination as is forbidden by the statute. Dunnage Allowances, 30 I. C. C. 538, 545.

(g) Fact that cancellation of dunnage allowance in certain territory, while traffic in other territories served by respondents will have such allowance, and traffic in closed cars will have different treatment than traffic in open cars, held not to effect such discrimination as is forbidden by the statute. Dunnage Allowances, 30 I. C. C., 538, 545, 546.

(h) It is unsound in principle to encourage car fitting or the use of dunnage in order to secure minimum loads, and to approve of the payment of allowances to offset expenses thus incurred. Dunnage allowances. 30 I. C. C., 538, 546.

(i) Allowance of 500 pounds for weight of dunnage used in connection with shipments of logs loaded on flat or gondola cars prescribed as reasonable. Reparation denied. Berry Lumber & Stave Co. v. M. & O. R. R. Co., Unrep. Op. A-771.

(j) Refusal to make allowance for weight of dunnage used on shipments of automobiles from eastern points to Pacific coast points, not found unreasonable. Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Ops. A-951, A-953.

§8. (3) Elevation of Grain.

See Transit.

(a) Refusal to allow one-fourth of one cent for the elevation and transfer of barley converted into malt, while paying this allowance for the elevation and transfer of barley and other grain which has been clipped, cleaned, blown, or mixed, does not result in unjust discrimination. Milwaukee Maltsters' Traffic Assn. vs. G. T. W. Ry. Co., 28 I. C. C. 489.

(b) In order to constitute "elevation," the grain must be loaded out of the elevator as well as unloaded into it. Milwaukee Maltsters' Traffic Assn. v. G. T. W. Ry. Co., 28 I. C. C. 489, 493.

(c) The Commission considered the proposed withdrawal by the L. & N. R. R. and the I. C. R. R. of an elevation allowance of ¼c per bushel on grain at St. Louis, Mo., and East St. Louis, Ill., when destined to Evansville, Ind. No elevation allowance is made at St. Louis and East St. Louis on grain moving to Ohio River crossings, all grain thus handled moving on proportional rates, 5c from St. Louis and 4c from East St. Louis. Transfer at St. Louis is not necessary to secure correct weights, which can be determined at the Evansville elevator or on the scales of the carriers. Most cars are loaded to their capacity, and the haul from St. Louis is but 165 miles, from E. St. Louis 162 miles. The elevation allowance is made by defendants at Peoria, Ill., the rate to Evansville being 7c. The revenue on a 60,000-lb. carload of wheat from E. St. Louis to Evansville is $24, from which $7.50 is deducted on account of elevation at E. St. Louis and switching at both points, leaving an actual gross revenue of $16.50, or 55c per ton, 3.39 mills per ton-mile, and 10.18c per car-mile. The proportional out of which the allowance is made is a compelled rate, the rate from Peoria being shrunk to 5c upon reshipment. HELD, that since it is evident that elevation is not a transportation necessity at St. Louis and E. St. Louis, withdrawal of the allowance is justified. Order of suspension vacated. Elevation Allowances at St. Louis and E. St. Louis, 30 I. C. C., 696.

(d) Elevation has been held to be a part of transportation which the railroad is required to furnish under the first section. But this refers only to such elevation as is a legitimate and necessary part of transportation as distinguished from commercial elevation; that is, a railroad may employ the owner of an elevator to perform a part of the transportation which is incumbent on the railroad, paying a reasonable compensation therefor. Elevation Allowances

at St. Louis and E. St. Louis, 30 I. C. C., 696, 697.

(e) The duty of the carrier to provide elevation is a necessary incident to the transportation of any shipment, can not be withdrawn from the public, for it is a part of the carrier's obligation under the law. That there are no tariffs on file which provide for elevation by carriers upon shipments of grain or seeds to a certain territory does not, of course, preclude the requirement that such tariffs be filed if it should be established that elevation is a necessary incident to transportation upon a particular movement. Grain Elevator Allowances at Kansas City, 34 I. C. C. 442, 447.

(f) The Commission considered proposed cancellations of allowances of 1-4c per bushel for elevation at St. Louis, Des Moines, Fort Worth, Kansas City, Omaha, and other points, of grain and seed, when not for export, destined to all points west and southwest of the Missouri River and in Louisiana west of the Mississippi River. No cancellations were proposed on eastbound or export traffic. No provision was proposed for elevation by the carriers in lieu of that by operators for which allowance had been made. It was contended that the allowances were not paid for any service of transportation, since they were paid by the carriers of outbound shipments; and that economy of transportation required that cars should go through as originally loaded. On the other hand, it appeared that cars from country stations were frequently loaded to less than capacity, and the outbound cars could be loaded from the elevators to capacity. And the elevator weights also saved the time and expense incident to weighing on track scales and were often preferred by carriers. But it was shown that elevation was not a necessary incident to the transportation involved. HELD (1) that the proposed cancellation was justified, and (2) it did not appear that unjust discrimination would result from the fact that some allowances were to be cancelled while others remained. The right of the carriers to cancel was not affected by the fact that they might adopt elevator weights, when ascertained, in preference to track-scale weights. Orders of suspension vacated. Grain Elevator Allowances at Kansas City, 34 I. C. C. 442.

(g) The elevation required of carriers by section 1, and for which, if rendered by an elevator operator, they may make an allowance under section 15 is such elevation as is reasonably necessary to the transportation involved; and carriers are not required by the Act to furnish elevation desired by the shipper for a commercial reason, but may permit stops in transit for such elevation, a transit service which, like all others, is subject to regulation by the Commission. Grain Elevator Allowances to Kansas City, 34 I. C. C. 442, 447.

§8. (3½) Leakage.

(a) Provision in tariff for allowance in repairing cars to insure against leakage in transit of bulk shipments of grain not construed to apply to lining and padding cars in preparation for shipments of flour in sacks. Lysle Commission Co. v. C. B. & Q. R. R. Co., Unrep. Op. A265.

(b) Sulphuric acid is considered a hazardous commodity on account of its charring and corrosive qualities and its liability to injure other freight in case of wrecks or leakage in transit. Goldfield Consolidated Mines Co. v. S. P. Co., Unrep. Op. A266.

§8. (4½) Lining and Padding.

See Supra §3½.

(a) Reparation awarded for failure to make allowance for stoves and car linings used in the protection of shipments of potatoes, in accordance with tariff provision. Miller & Co. v. C. & N. W. Ry. Co., Unrep. Op. A137.

(b) Revision of defendant's tariff rule with reference to return of stoves and linings furnished by shippers in connection with shipments of potatoes suggested. Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A133.

(c) Reparation awarded for failure to make allowances for stoves and car linings used in the protection of shipments, of potatoes in accordance with tariff provision. Miller & Co. v. C. & N. W. Ry. Co., Unrep. Op. A137.

(d) Provision in tariff for allowance in repairing cars to insure against leakage in transit of bulk shipments of grain not construed to apply to lining and padding cars in preparation for shipments of flour in sacks. Lysle Commission Co. v. C. B. & Q. R. R. Co., Unrep. Op. A265.

(e) Cost of lining refrigerator and produce cars varies from $11 to $15 per car. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R., 30 I. C. C. 437, 440.

(f) Complainant asked reparation for expenses incurred in lining cars for the shipment of potatoes in winter from points in Wisconsin, Minnesota, and the Dakotas to points in Illinois, Iowa, Ohio, Indiana, and various other states, and in equipping such cars with stoves and fuel to protect such shipments from cold. Western classification rules required that shippers must line cars at their own expense and that rates for freight in carloads should not obligate carriers to furnish heated cars; and rates were constructed upon the theory that the shippers would provide such service. HELD, that, since it appeared that the rate was not intended to include the heating or lining of cars and that the established practice had been for the shippers, at their own expense, to line and heat the cars, the complaint must be dismissed. Reparation denied. Best Co. v. G. N. Ry. Co., 33 I. C. C. 1.

(g) Where tariffs naming rates on potatoes from points in Minnesota, North Dakota, South Dakota, and Wisconsin to points in various other states were constructed upon the theory that the shipper would render such service and furnish such instrumentalities as might be necessary to protect his shipments from the cold, the shipper was not entitled to an allowance on account of sums expended by him in lining and heating cars for that purpose. Best Co. v. G. N. Ry. Co., 33 I. C. C. 1.

§8. (5) Spotting Cars.

See Crimes, §7 (c).

(a) Performance by line carriers of plant industry service and the payment by them of allowances for the performance of such services by the industries, held to constitute an illegal rebate. Industrial Railways Case, 29 I. C. C. 212, 237.

(b) Spotting cars is a special service of value to shipper. Industrial Railways Case, 29 I. C. C. 212, 226.

(c) Possibly under Act carriers may be required, upon reasonable compensation, to spot cars. Industrial Railways Case, 29 I. C. C. 212, 226.

(d) Spotting cars ordinarily done without any charge in addition to the published rate. Industrial Railways Case, 29 I. C. C. 212, 226.

(e) As existing rates must be deemed to have been constructed to cover the customary placement of cars at factory doors, whether upon an industry spur or private siding, or upon the tracks of an industrial plant and the outward movement of cars from such tracks, without regard to the size or nature of the plant, to now add a charge to the line-haul rate for that service would be revolutionary. Car Spotting Charges, 34 I. C. C. 609, 616.

(f) The Commission considered the propriety and reasonableness of a "spotting charge" of 5 1-2c per ton, minimum $2.00 per car, for placing cars for loading or unloading at convenient points on the tracks of industries specifically named in certain tariffs filed to comply with Industrial Railways case, 29 I. C. C. 212. The industries had been arbitrarily selected without regard to size, and respondents performed the same service free of charge for many other industries. HELD that the proposed "spotting charge" was not justified, since; (1) it would apply in many cases to services covered by the line-haul rate and, (2) to impose the charge on the industries named in the tariffs and not on other industries for which like services were performed would result in unjust discrimination. Car Spotting Charges, 34 I. C. C. 609.

(g) Whatever transportation service or facility the law requires the carriers to supply they have the right to furnish, and it does not follow, therefore, that because the line-haul rate covers the movement of cars incident to the receipt and delivery of carload freight on industry spurs, or on the interior tracks of industrial plants, that the owner of the property transported may in every case receive an allowance from the carrier when he performs that service. Car Spotting Charges, 34 I. C. C. 609, 617.

(h) There may be cases in which the spots at which cars are placed for loading and unloading in complex industries are so located that the request for the receipt and delivery of carload freight at such spots could not, in view of general usage, be regarded as reasonable, and where a charge for the spotting service in addition to the line-haul rate might therefore be justified. But the

mere fact that an industry is complex, or that it requires an interplant service in addition to the receipt and delivery of carload freight is not sufficient to justify an additional charge for the placing of cars at the door of the industrial plant for the receipt or delivery of carload freight. The line-haul rate, however, covers only one placement of the car for loading or unloading, and an additional charge should be made for each additional placement of the car for that purpose. Car Spotting Charges, 34 I. C. C. 609, 618.

(i) The mere size or complexity of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery of freight at the door of the plant. The service involved in the placement of cars for loading or unloading at an isolated industry to which a single spur leads may be as great as that rendered in the placement of cars for loading or unloading in a large plant having an intricate system of interior tracks. At the large industries the trunk line may render interplant services in the movement of cars from place to place within the plant during the processes of manufacture which it has no occasion to render at smaller industries, and for such services an additional charge should be made; but where the service rendered is merely a substitute for the service which would be required if the movement were to or from a team track, an industry spur, or a private siding, nothing should be added to the charge for the line haul. Car Spotting Charges, 34 I. C. C. 609, 616.

(j) Especially ought the tracks of the industrial plant to the extent that they are used by the carrier for a public service be treated as a part of its terminal facilities where the carrier does not show that it would be possible for it to provide the necessary terminal facilities in any other way. The public interest is served in many ways by permitting the carriers to use the tracks of industrial plants as a part of their terminal facilities. The exclusively owned terminals of the carriers are thereby relieved of a heavy burden under which they would either break down completely or be so congested as to greatly inconvenience shippers who are compelled to receive and deliver their freight in those terminals. The distribution of terminals also tends to prevent the undue concentration of industries and consequent concentration of population, thus aiding the solution of one of our social problems. Car Spotting Charges, 34 I. C. C. 609, 619.

(k) It has long been the custom of carriers in this country to receive and deliver carload freight upon spur tracks leading to private industries at convenient points for loading and unloading without imposing any charge for that service in addition to the line-haul rate, and where this service is merely a substitute for team-track receipt and delivery of carload freight the line haul rate covers the service for the reason that rates generally in this country have been constructed upon that basis. Car Spotting Charges, 34 I. C. C. 609, 616.

(l) The mere fact that many individual plants are operated together as a single industry does not deprive the industry of the right to such a service in the receipt and delivery of carload freight at each of the several plants as that plant would be entitled to have if it were operated separately, unless the collective operations so far removes the necessity for such a service as to make it unreasonable for the industry to demand the service. Car Spotting Charges, 34 I. C. C. 609, 618.

(m) The service which the carrier renders in the movement of cars over the interior tracks of the industrial plant for the purpose of receiving and delivering carload freight of the industry is a public service, and the tracks are used both for that public service and for the private purposes of the industry. It is immaterial that the carrier may not use the tracks for all the purposes for which it uses the ordinary industry spur. Car Spotting Charges, 34 I. C. C. 609, 61[illegible]

(n) To permit carriers to add to the line-haul rate a charge for the movement of cars incident to the receipt and delivery of carload freight at industries selected because of their size or complexity, or upon some other basis equally uncertain, while treating a like service at all other industries as covered by the line haul rate, would result in unjust discrimination of a flagrant character. Car Spotting Charges, 34 I. C. C. 609, 618.

(o) Section 15 of the Act to regulate commerce, amended by the act of 1906,

clearly recognizes the right of the shipper to obtain compensation for spotting cars involved, and the mere fact that the Interstate Commerce Commission, in refusing to act under the provisions of that Act in behalf of a shipper to that end, does not prevent a court, in an action upon a contract providing for such compensation, recognizing the law in its true construction. The section cited provides that "if the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable," which is equivalent to saying that such just and reasonable charge and alowance may be made where such services are rendered. Indeed, without such charge and allowance, there must result an inequality of conditions to the shipper who furnishes such service or affords such instrumentalities, and this is the real purpose sought to be avoided by the statute here under consideration. The transportation company, in its contract of carriage, undertakes to perform all of the duties of a common carrier, to perform an equal service for all upon substantially the same terms and conditions—that is, the essence of the contract of a common carrier. If one shipper affords instrumentalities, such as cars, locomotives, yard space, tracks, etc., while another is afforded all of these things by the transportation corporation, there is an equality. It costs the one shipper much more than the other to accomplish the same results, and the law never contemplated this. Indeed, the evil sought to be obviated in the enactment of the Act to regulate commerce was the discrimination which existed among shippers and between localities. It was charged, and in many cases established, that the railroads of the country were, by discrimination in rates and facilities, building up one line of enterprises at the expense of others, were creating industrial communities in one location and preventing them in others, as the interests or caprice of the management dictated, and the statute in question was enacted to bring about a full performance of the duties of common carriers, not to work an injustice between shippers and the transportation corporations by preventing an intelligent apportionment of the transportation services between them, where co-operation conducted to the benefit of each and to the public in general. N. Y. C. & H. R. R. Co., v. Gen. Electric Co., 153 N. Y. S., 478, 483.

(p) It is the obligation of a railroad to spot cars for shippers. N. Y. C. & H. R. R. Co. v. Gen. Electric Co., 153 N. Y. S., 478.

(q) A contract by which a railroad pays to a shipper a certain charge for the spotting of cars by the shipper is valid. N. Y. C. & H. R. R. Co., v. Gen. Electric Co., 153 N. Y. S., 478, 484.

§8. (6) Staking.

(a) Requirement that shipper furnish proper stakes and head-blocks for flat cars in connection with shipments of rails from Loon Lake, N. Y., to Hoosac Tunnel, Mass., not found unreasonable. Reparation denied. H. T. & W. R. R. Co. v. D. & H. Co. Unrep. Op. A-639.

(b) Reparation awarded for overcharge on boilers from Galesburg, Ill., to Ray Junction, Ariz., no allowance of 500 pounds on each car having been made for car stakes and blocking. Frost Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep Op. A-881.

(c) Tariff provided an allowance of 500 pounds for stakes and blacking used to secure loads on cars. Reparation awarded for overcharges on boilers from Galesburg, Ill., to Ray Junction, Ariz. Frost Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-881.

(d) Defendant's failure to make allowances for bulkheads on shipments of produce between Knoxville, Pa., and Bath, N. Y., not found unreasonable. Dean & Co. Inc. V. B. & S. R. R. Co., Unrep. Op. A-903.

(e) Defendants' practice of requiring shippers to furnish bulkheads at their own expense on shipments of produce between Knoxville, Pa., and Bath, N. Y., not found unreasonable. Dean & Co. Inc. v. B. & S. R. R. Co., Unrep. A-903.

(f) Defendants' practice of requiring shippers to furnish bulkheads at their own expense on shipments of produce between Knoxville, Pa., and Bath, N. Y., not found unreasonable. Dean & Co. Inc. v. B. & S. R. R. Co. Unrep. Op. A-903.

(g) Reparation awarded for overcharge on boilers from Galesburg, Ill.. to Ray Junction, Ariz., on account of no

allowance having been made for car stakes and blocking. Frost Mfg. Co. v. A. T. & S. F. Ry. Co. Unrep. Op. A-881.

(h) Defendants failed to make allowance for bulkheads on shipments of produce between points in the state of New York. Reparation awarded. Dean & Co. Inc., v B. & S. R. R. Co. Unrep. Op. A-903.

(i) Where the allowances prescribed by state law for staking lumber cars for local shipments are paid, lower charges result on local than on export shipments, but mere differences in charges do not establish unjust discrimination. Shands v. S. A. L. Ry., 34 I. C. C., 214, 215.

(j) Complainants, shippers of lumber between sawmills at Meredith and Walling Spur, Fla., and the ports of Jacksonville and Fernandina, Fla., attacked defendant's refusal to pay, as required by state statute of carriers doing an intrastate business, $1.50 for staking flat cars for loading with lumber. The shipments were of lumber moving in coastwise and foreign trade. HELD, that defendants refusal to pay the allowances demanded and to provide for such allowances for interstate or foreign shipments was neitheir discriminatory nor unlawful. Complaint dismissed. Shands v. S. A. L. Ry., 34 I. C. C. 214.

(k) Generally, when it is necessary to secure upon the car freight which the shipper loads, it is the duty of the shipper to provide the necessary material and do the work. Shands v. S. A. L. Ry., 34 I. C. C. 214, 215.

IV. LEGALITY OF ALLOWANCES.

§9. In General.

(a) The allowances and free services accorded by line carriers to industrial railways were never taken into consideration by the former in fixing the rate, but in effect are concessions from the rate. Industrial Railways Case, 29 I. C. C., 212, 216.

(b) Upon the general public rests the burden of contributing sufficient revenues to the carriers to enable them to meet their expenditures, including allowances and free service accorded to industries, and in addition to earn an adequate return upon the property so devoted to the service of the public. Industrial Railways Case, 29 I. C. C., 212, 213.

(c) The traffic of the great iron and steel industries is so enormous as to make it a facile instrument for forcing concessions from line carriers; and when one line has yielded to these influences, the others serving the same industry must necessarily pay the same price or lose their share of the tonnage offered for carriage by the industry. In this manner the practice has spread from industry to industry, and the varying forms by which it is surrounded and under which it is conducted at the different plants are simply a cloak and device to give it the color of legality. Industrial Railways Case, 29 I. C. C., 212, 266.

(d) Allowances frequently made on account of drying out coal in transit. In re Weighing of Freight, By Carriers, 28 I. C. C. 7, 25.

(e) Allowances under section 15 must not be above reasonable cost of service performed by shipper. Mfrs. Ry. Co. v. St. L. I. M. & S., 28 I. C. C. 93, 101.

(f) Allowances cannot be made, under section 15, to industrial line which is a common carrier, as railway is no longer "the owner of property transported." Mfrs. Ry. Co. v. St. L. I. M. & S., 28 I. C. C. 93, 102, 108.

(g) Allowances, under section 15, can only be made to "the owner of property transported." Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 102.

(h) Lumber being excepted from the "commodities" clause, it was HELD, affirming the decision of the Commerce Court in 209 Fed. 260, reversing 23 I. C. C. 277, 549, that a "tap line" railroad is entitled to the same allowance from a trunk line out of the joint through rate for logs and lumber offered the tap line by its proprietary company as it receives out of the rate for non-proprietary logs and lumber. United States v. Butler County R. R. Co., 34 Sup. Ct. 748, 750; 234 U. S. 29, 58 L. ed. —.

(i) Tap lines connecting timber districts and lumber mills with trunk lines are common carriers of proprietary as well as of non-proprietary lumber, and as such entitled to participate in joint rates, where the fact that the tap lines are owned by persons who also own the timber and mills which they principally serve, is not shown to be inconsistent with the laws of the state in which they are organized and operated, lumber being ex-

cepted from the "commodities" clause. United States v. L. & P. Ry. Co., 34 Sup. Ct. 741, 748; 234 U. S. 1; 58 L ed. —.

(j) Allowances granted by carriers in guise of divisions may be rebates. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C., 559, 562.

(k) That provision of section 15 under which shippers may be compensated by the trunk lines for their facilities used in the handling of their own shipments was enacted to give the Commission a means of eliminating certain unjust discriminations. The gradual elimination of discriminatory practices by other processes leaves this provision of the law to be used as a cloak for various payments which but for it would be looked upon as rebates. Second Industrial Railways Cases, 34 I. C. C. 596, 608.

§10 Transportation Service Performed by Shippers.

See Tap Lines §3 (1); Transportation §1.

(a) The provision of section 15 which permits the Commission to determine what is a reasonable charge as the maximum to be paid by the carrier for services rendered in connection with the transportation by the owner of the property transported or to be paid for instrumentalities furnished by such owners, does not apply where it clearly appears from the tariffs or other established practice that the rates published were constructed upon the theory that the shippers would render the service or furnish the instrumentalities, and that the shipper before such rendering or furnishing took no steps to require the carriers to include the service or instrumentalities furnished by him. In such case the shipper cannot recover unless he shows that he has been damaged by the failure of the carriers to publish a rate which would cover the entire transportation. Best Co. v. G. N. Ry. Co., 33 I. C. C. 1, 4.

§11. Transportation Facility.

See Supra, §10; Tap Lines, §4

(a) No service can lawfully be required of a line carrier beyond the point of interchange with an industry, and therefore a line carrier cannot be required to make an allowance to the industry out of the rates for doing the service for itself with its own facilities. Industrial Railways Case, 29 I. C. C., 212, 230.

(b) Under Section 15 of the Act the Commission is authorized to fix a reasonable maximum charge or allowance for any service rendered by the owner of property transported in connection with such transportation or for furnishing any instrumentality used therein. But it must be shown that the service is rendered in connection with transportation or is an instrumentality used therein. Inman, Akers & Inman, v. A. C. L. R. R. Co., 32 I. C. C. 146, 148.

§12. What is Not Transportation Service.

§12. (2) Operation of Plant Facility.

(a) Allowances by common carriers for facilities or plant service are unlawful. The distinguishing characteristic of plant service is that the facilities employed are not accessible or available to the public. A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92.

(b) It certainly cannot be the policy of the nation to prevent the most economical production of manufactured goods, or to compel the defendant to cart its vast shipments from cars placed upon the plaintiff's own side tracks remote from defendant's works; nor does there appear to be any good reason why the plaintiff should be compelled to furnish the locomotive equipment necessary to place this freight, in the performance of its duties, as a common carrier, where the defendant finds it more economical, and better adapted to its own work, to furnish the necessary facilities, which may be used betimes for the interplant movement of freight. The whole arrangement appears to have been worked out as a rational business proposition, equally advantageous to both parties to the contract, without prejudice to the rights of any one, and the only legitimate question which could be raised was the fairness of the contract. Of course, if it merely served the purpose of covering up a rebate, if its purpose was to avoid the equality provisions of the law, a different question would be presented; but, where the shipper in good faith performs a part of the service of transportation, there is no reason in law or justice why he R. R. Co. v. Gen. Electric Co., 153 N. Y. C. & H. R. R. Co., v. Gen. Electric Co., 153 N. Y. S., 478, 484.

V. REASONABLENESS OF ALLOWANCES.

§13. In General.

See Tap Lines, §6½.

(a) Allowances, under section 15, must not be above reasonable cost of service performed by shipper. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101.

(b) Allowances or divisions increased upon a showing that an increased service was performed. Tap Line Case, 31 I. C. C., 490, 493.

ALTERNATIVE RATES.

I. ESTABLISHMENT AND REASONABLENESS.

See Released Rates.

(a) The Carmack amendment does not prohibit carriers from entering into reasonable contracts with shippers for a release from liability as an alternative to other tariff provisions, under which the carriers will accept this responsibility themselves. Protection of Potatoes in Winter, 29 I. C. C. 504, 507.

(b) A tariff may offer a protected service for shipment of potatoes in winter at rates which the carrier considers justly compensatory, in view of the character of the service and the liability involved for loss and damage resulting from inadequate protection; at the same time proffering the shipper the alternative right, at a lower charge, to furnish this protection for himself upon releasing the carrier from liability. Protection of Potato Shipments in Winter, 29 I. C. C. 504, 506.

(c) Higher rates and lower minimum weights, with privilege of two-for-one rule or reduced rates and higher minimum applicable to cars of all sizes, without benefit of two-for-one-rule, should be established. Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co., 28 I. C. C. 237, 239.

(d) Sometimes reasonable to make varying rates on same commodity, dependent upon value. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112.

(e) Where rate depends upon release of carrier's liability, tariff should provide for exercise of choice of rates by means of a statement in bill of lading, signed by shipper, that shipment is released to value stated in tariff. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 113.

(f) The provisions in the Carmack Amendment that no contract, receipt, rule, or regulation shall exempt an interstate carrier from the liability thereby imposed, does not forbid a limitation of liability, in case of loss, to a valuation agreed upon in the contract of shipment, for the purpose of determining which of two alternative rates shall apply to the shipment. N. C. & St. L. Ry. v. C. V. Truitt Co. (Ga. App. 1914), 82 S. E. 465.

ANTI TRUST ACT

See Financial Operation, §1 (cc) (r); Interstate Commerce Commission, §1 (h)

ANY-QUANTITY RATES.

I. REASONABLENESS AND APPLICATION.

CROSS REFERENCES

See Advanced Rates, §5 (2), (j); Evidence, §14 (5) (d).

(a) Carload rating refused on ground that business conditions in the territory had adapted themselves to existing any-quantity rates. Taylor Dry Goods Co. v. M. P. Rv Co., 28 I. C. C. 205, 209.

(b) Tendency in South is to make an any-quantity rate. German Kali Works, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 224.

(c) Any-quantity rates on champagne from New York to California terminals not found unreasonable. Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 376.

(d) Advance in rates on wool, any quantity, from Lawrence, Mass., to Lewiston, Me., justified. Massachusetts-Maine Wool Rates, 28 I. C. C. 396.

(e) Complainant attacked the any-quantity rates on brooms from all points east of the Rocky Mountains, of $2.10 per 100 lbs., to California terminals, and $2 per 100 lbs. from all points west of the Illinois-Indiana line, to north Pacific Coast points, as unduly prejudicial against Wichita, and discriminatory compared with rates on broom corn. From points east of the Illinois-Indiana line the any-quantity rate was $2. The any-quantity rates were less than the class rates, in

carloads and less than carloads, and had been in effect several years. The most extensive broom corn area in the United States embraces southwestern Kansas, western Oklahoma, the Texas panhandle, and part of New Mexico; and Wichita, situated in close proximity, is the chief concentrating point and largest market for broom corn in the United States. Complainant, a broom manufacturer at Wichita, draws its raw material from nearby producing fields at a rate of 39.3c per 100 lbs., while Pacific Coast manufacturers buy in the same fields and ship under a commodity rate of $1.25 in carloads, minimum 14,000 lbs. Eastern manufacturers also draw on the Wichita market for broom corn, paying a higher freight rate than complainant. The normal price of broom corn ranges from $50 to $100 per ton, and in manufacture there is a waste of from one-third to one-half. On a basing price of $100 per ton, the cost of manufacture at Evansville, Ind., and other eastern points was $2.18; at Wichita, $2.34. Complainant shipped only 62 carloads of brooms to the Pacific Coast, as it cannot compete except on the higher grades of brooms. To meet competition of the growing plants on the Pacific Coast, complainant had established warehouses at Seattle, Oakland and Los Angeles, to which it shipped brooms in carload quantities. Brooms in carloads are remarkably free from claims for damages, although brooms in less quantity are liable to be somewhat damaged. Broom corn loads much more heavily than brooms, but no uniform relation between the broom and broom corn rates exists under the three different classifications. The rate of $2.10 on brooms to California was established to meet water competition, and some brooms are still shipped by water to California and Pacific points. The commodity rate on broom corn had been in effect for over 10 years and included valuable concentration and transit privileges at Wichita. The cost of manufacturing brooms on the Pacific Coast was above the cost at Wichita, partly due to the fact that they did not get the better quality of broomcorn, and their waste consequently ran as high as 50 per cent. The cost of making average brooms at Wichita was $2.34 per doz.; on the Pacific Coast, $3.42 per doz. The Pacific Coast market appeared to be pretty evenly divided between local and eastern manufacturers. HELD, that the evidence adduced was insufficient to prove the rates attacked to be unreasonable per se, nor is the rate on brooms unduly prejudicial from Wichita as compared with eastern points, nor the rate on broom corn discriminatory as against the rate on brooms. Wichita Business Assn. v. A. T. & S. F. Ry. Co., 30 I. C. C. 45.

(f) Though the Commission has often recognized the propriety of differentiation between carload and less-than-carload rates, it does not follow that an any-quantity rate is, by reason of being such, unreasonable when applied to carload traffic. Wichita Business Assn. v. A. T. & S. F. Ry. Co., 30 I. C. C. 45, 52.

(g) Complainants attacked defendant's rates and certain regulations and practices affecting rates and charges on flour and other grain products from the Valley of Virginia to Carolina territory, as unreasonable and discriminatory. The rates were any-quantity rates, those on flour being from 1c to 4c above the rates on wheat and feed. Complainants asked that the spread and the any-quantity basis be eliminated. For instance, they asked that the existing rate on wheat, any quantity, from Elkton, Va., to Charlotte, N. C., 319 miles, be reduced from 25c to 15c and be applied as a carload rate, not only to wheat and feed, but to flour, on which the existing rate was 28c. Though complainant's interest lay in preserving to themselves the local wheat supply, it did not appear that they were not successfully placing flour in Carolina, nor that the Carolina millers were in a more flourishing condition. Rates from Elkton and Strasburg, Va., as compared with rates from Cincinnati, Ohio, were the same or only a few cents lower on wheat and flour, although in all instances the haul from Cincinnati was several hundred miles longer. Ohio River rates were in general lower, but while the flour rates from Virginia represented the full measure of the carrier's compensation, rates from the Ohio River were substantially proportional rates, enabling carriers to participate in the traffic from points north. Rates from the Ohio River were a differential of 11c over those from Virginia gateways; on traffic from the Valley of Virginia the differential ranged from 1c to 5c. Per-ton-mile earnings from the latter points of origin to the gateways, Lynchburg and Roanoke, Richmond and Norfolk, were 5.7 mills. From the gateways to Greensboro, Goldsboro and Charlotte, N. C., for average distances of 180, 209

and 260.5 miles, the rates on flour were 21c, 21c and 23c, and on wheat 18c, 18c and 20c. From the Ohio River to southeastern basing and common points, rates on flour and grain were generally the same, while from the Virginia cities the spreads generally represented the differences in rates on classes C, D and F. HELD, (1) that the rates on flour and other grain products from the Valley of Virginia to Carolina territory were not unreasonable, being fairly adapted to the needs of the communities and interests affected; (2) that, following Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, and Duncan & Co. v. N. C. & St. L. Ry. Co., 16 I. C. C. 590, complainant's prayer for establishment of carload and less-than-carload rates in lieu of any-quantity rates should be denied. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623.

(h) The unit of transportation is one for the carriers to decide as long as they publish reasonable any-quantity rates, and they will not ordinarily be required to apply different rates to carloads than to less than carloads, especially if to do so would tend to increase the prevailing rates for less than carloads. Stuarts Draft Co. v. S. Ry. Co., 31 I. C. C. 623, 631.

(i) Dairy products, dressed poultry, fresh fish, and sometimes fresh meat, are usually based on any-quantity rates. Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349.

(j) A requirement that a commodity be shipped to a certain point in carloads to secure even approximately the any-quantity rates to another point, unexplained of record, is of itself unreasonable and unjustly discriminatory. Salt Lake Mattress & Mfg. Co. v. A. T. & S. F. Ry. Co., 32 I. C. C., 417, 426.

(k) Under conditions which exist in the cotton business an any-quantity rate is a practical necessity, and an order requiring that it be superseded by carload and less-than carload rates would be detrimental to the public interest. Am. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C., 458, 465.

(l) Complainants attacked the rates on cotton from producing fields of Arkansas, Oklahoma, and Texas, to Houston, Galveston, and Texas City, Tex., and New Orleans, La., as unreasonable as applied to round bales of great density and sought a reduction of one-third on carload lots. Cotton was ordinarily transported from gin point to compress, an average distance of 25 to 30 miles, in flat bales loading 12,500 lbs. to the car and thence to destination in square bales loading 25,000 lbs. Cotton compressed at the gin point in round bales loaded to 50,000 lbs. Rates were any-quantity based on shipments compressed in transit, where compress charges, 10c per 100 lbs. were absorbed by the carrier. Precompressed cotton was accorded a rate of 10c less. Even with precompressed cotton the movement from gin point to destination was generally interrupted to permit of sorting. Economies to the carrier would result principally in train expenses, which however constituted but 27.7 per cent of the total operating expenses. Less than 1 per cent of shipments was in round bales. Cotton averaged only 11 bales to the farm and establishment of carload rates would reduce competition in the purchase of cotton. A carload of round-bale cotton being worth $5.000 buying would be confined to men of large capital. HELD, (1) that the existing any-quantity rates on cotton were not unreasonable nor discriminatory, even when applied to bales of high density; (2) that the cotton industry in the southwest was so organized that existing any-quantity rates were best suited to its needs, and establishment of carload rates, though they might effect economies in transportation cost, would tend unduly to concentrate the cotton-producing industry. (3) Complaint dismissed. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C., 458.

(m) Basis of any-quantity rates general throughout south where rail lines are affected by water competition. Stuarts Draft Milling Co. v. S. Ry. Co., 31 I. C. C., 623, 631, 632.

(n) Carload rate is same as quantity rate in North Carolina and slightly lower than the any-quantity rates in South Carolina and Georgia. Not found unreasonable. Barnhardt Mfg. Co. v. S. Ry. Co. Unrep. Op. A-698.

(o) Any-quantity rates not unreasonable or discriminatory even when applied to bales of high density, and are a practical necessity. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C., 458, 463, 465.

(p) An order requiring any-quantity rate to be superseded by carload and less-than-carload rates would be detrimental to public interest. American

Round Bale Press Co. v. A. T. & S. F. Ry., Co. 32, I. C. C., 458, 465.

(q) Economies of carriage can not be insured under a preferential rate on high-density cotton in any quantity. American Round Bale Press Co. v A. T. & S. F. Ry. Co., 32 I. C. C. 458, 467.

APPEAL

See Courts, II; Interstate Commerce Commission, VII.

APPLICATION OF RATES

See Absorption of Charges, I; Accounting, II; Basing Points and Lines, I; Commodity Rates, 1, II; Differentials, II; Long and Short Hauls, III; Minimums, I; Proportional Rates, I; Through Routes and Joint Rates, §18.

ASSIGNMENTS

See Loss and Damage, §5¾.

ASSOCIATION.

I. RIGHT TO SUE.

See Reparation, §6 (p).

(a) A voluntary association cannot file a complaint in favor of its members without naming specifically those persons in whose favor the complaint was brought. While other members of the association, or other shippers not members may become parties to the original proceeding, the period of limitation will be reckoned from the date when they appeared as parties to the record. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 394.

ATTORNEYS' FEES.

See Loss and Damage, §1 (d), §3, (f).

(a) A state statute allowing a reasonable attorney's fee of not over $20 to the successful plaintiff, in an action in which an attorney is actually employed to recover upon a claim not exceeding $200 not paid within 30 days after demand, for services rendered, material furnished, stock killed or injured, or for overcharges on freight or express, or for lost or damaged freight, is not void as conflicting with the Carmack amendment; since such state statute neither enlarges nor limits the responsibility of the carrier for the loss of property entrusted to it, and only incidentally affects the remedy for enforcing that responsibility, imposes not a penalty but a compensatory allowance for the expense of employing an attorney, and, in fact and effect, merely authorizes a moderate increment of the recoverable costs of suit in the large class of cases within its scope, among which are only incidentally included claims for freight lost or damaged in interstate commerce. M. K. & T. Ry. Co. v. Harris, 34 Sup. Ct. 790, 793; 234 U. S.; 58 L. ed.—

(b) One against whom a judgment was rendered on a claim not arising out of interstate commerce, is not in position to urge the invalidity under the interstate commerce act of a state statute allowing a reasonable attorney's fee to the successful plaintiff in suits on certain classes of claims against carriers. M. K. & T. Ry. Co. v. Cade, 34 Sup. Ct. 678; 233 U. S. 642; 58 L. ed.—.

(c) In suits brought to obtain reparation for a violation of the Interstate Commerce Act, an attorney's fee cannot be taxed for attention given proceedings before the Interstate Commerce Commission but only for service rendered in the Unites States court to compel observance to the order of the Commission in the case. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 337. 236 U. S. 412, 434; 59 L. ed.

(d) Section 16 of the Interstate Commerce Act, awarding an attorney's fee in certain cases, is constitutional. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 337. 236 U. S. 412, 434; 59 L. ed.

(e) An attorney's fee of $10,000 for service in the District Court incurred in the bringing of a suit to compel the payment of a reparation claim of $110,000, is reasonable. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 337. 236 U. S. 412, 434; 59 L. ed.

(f) The provision of section 16 of the Commerce Act, providing that if the petitioner finally prevail he shall be allowed a reasonable attorney's fees, to be taxed as a part of the costs, held constitutional. D. & R. G. Ry. Co. v. Baer Bros. Mercantile Co. (C. C. A., 1913), 209 Fed. 577, 581.

(g) The Commission is without authority to award counsel fees or costs in reparation cases, this being limited, under section 8 of the Act, to actions in

court. Bottsford & Barrett v. P. R. R. Co., 29 I. C. C. 469, 472.

AVERAGE DEMMURAGE PLAN

See Demurrage, §13.

BACK HAUL

See Additional Charges, (1), (o), (z); Blanket Rates, §13 (g); Demurrage, §4 (d); Evidence, §5½, §13 (l), (h); Facilities and Privileges, §7; Routing and Misrouting, §5½ (d), (e), §7 (aa).

BAGGAGE

See Passenger Fares and Facilities, §10, §14 (i).

BANKRUPTCY

See Loss and Damage, §12 (a).

BASING POINTS AND LINES.

I. APPLICATION.
§1. In general.
II. ESTABLISHMENT.
§2. In general.
III. REASONABLENESS.
§3. In general.

CROSS REFERENCES

See Differentials, §4 (a), §8 (b), (c), (i); Evidence, §5; Long and Short Hauls, §5 (hh), (uu); Passenger Fares and Facilities, §3; Through Routes and joint rates, §2 (v).

I. APPLICATION.

§1. In General.

(a) West bank of the Mississippi River is western boundary of percentage zone territory, and all crossings, both upper and lower, are under percentage basis of rates with respect to traffic and to and from points east of Buffalo and Pittsburgh. Mississippi River Case, 28 I. C. C. 47, 50.

(bc) Upper Mississippi River crossings include Keokuk, Fort Madison, Burlington, Muscatine, Davenport, Clinton and Dubuque, Iowa. Mississippi River Case, 28 I. C. C. 47, 48.

(d) Missouri River taken as basing point in establishing proportional rates to interior Iowa cities. Interior Iowa Cities Case, 28 I. C. C. 64, 75.

(e) Division received to next more distant common point accepted as rate to local or non-competitive points, thus securing benefit of competition to more distant common point. Mayor and Council of Vienna v. G. S. & F. Ry. Co., 28 I. C. C. 173, 175.

(f) Basis of rate-making to Lagrange is that commonly in use to non-competitive points in the Southeast; that is, the lowest combination on nearby competitive points. Lagrange Chamber of Commerce v. A. & W. P. R. R. Co., 28 I. C. C., 178, 180.

(g) Rates from eastern points of origin to interior Iowa destinations are made by adding together the rate to Mississippi River and the rate from that river to destination. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 194.

(h) Rates from interior Iowa points to the West are made by adding together the local rate up to Missouri River and rate from that river. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 194.

(i) Rates from New England mills to Missouri River are made by combination upon Mississippi River. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 213.

(j) Generally speaking, rates from all the river crossings to Columbia and Augusta are constructed with reference to through transportation from more distant points of origin. Differentials to the various crossings are the result of efforts by the carriers to equalize the through rates from any particular point of origin via any reasonably direct or practicable gateway on either river. Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 342.

(k) All long-distance rates from eastern and western points to Columbia, S. C., and Augusta, Ga., may be shown substantially by the rates from a few pivotal points of origin, the rates from other points bearing established relations thereto. Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 340.

(l) From Trunk Line Territory, Aurora 104 per cent of New York-Chicago rates; Elgin, 110 per cent; Batavia, St. Charles and Geneva, towns between Aurora and Elgin, 104 per cent. Elgin Commercial Club v. B. & M. R. R., 28 I. C. C., 380, 381.

(m) Through rates from the Ohio River crossings to Pelham, Camilla and Sylvester, Ga., are constructed by the addition of prescribed arbitraries to the rates to certain of the basing points. They are published in a joint agents' tariff, and are thus joint through rates. Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C., 433, 434.

(n) Peoria, Ill., takes 110 per cent of the New York-Chicago rate on traffic to and from the East. Springfield is in the 117 per cent territory. If Peoria enjoys a rate of 110 per cent, the rate to Springfield should not exceed 113 per cent. Springfield Commercial Assn. v. P. R. R. 28 I. C. C. 511, 514.

(o) Rates on grain from Illinois to the southeast, south and southwest are usually made by naming a rate to the Ohio River or to St. Louis, which, in combination with the rate beyond, makes up the through transportation charges to destination. Grain rates in C. F. A. Territory, 28 I. C. C., 549, 556.

(p) Rates between the Atlantic and Central Freight Association territory are generally stated in groups at a percentage of the Chicago-New York rate. Grain Rates in C. F. A. Territory, 28 I. C. C., 549, 555.

(q) Although Illinois is divided into territorial groups, to which percentage rates are applied in case of most commodities, grain rates have not for some time been and are not to-day so stated. Grain Rates in C. F. A. Territory, 28 I. C. C., 549, 555.

(r) Class and commodity rates to Texarkana from certain territory are made by adding differentials to the rates from St. Louis or Kansas City, which are taken as basing rates. Texarkana Freight Bureau v. St. L. I. M. & S. Ry Co., 28 I. C. C., 569, 571.

(s) Cincinnati is a natural gateway for traffic moving to Atlanta. Atlanta Freight Bureau v. N. C. & St. L. Ry. Co., 29 I. C. C. 476, 481.

(ss) The usual thing in rate-mak ing is that the return per ton mile should decrease with distance. It results that the rate per ton mile for any haul is usually somewhat less than the rate per ton mile for any shorter haul over a portion of the same route. In case of a rate-breaking point, however, a different result obtains. The rate for shipments through such a point is the sums of the rates to such point, plus the rate to destination. The merchant at such point may ship goods thereto, merchandise them, and ship therefrom at a total rate no greater than the through rate from origin to destination. Thus the jobber at such point has an advantage over those at other intermediate points, who must pay rates somewhat higher than the through rates. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 377.

(t) Direct one-line haul is rate-making route. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 490.

(u) New Orleans is the axis on which the banana rates from other gulf ports turn. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 512.

(v) Cincinnati-Detroit basis extended to Birmingham and Tuscaloosa. Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265, 267, 270.

(w) From Wisconsin paper mills, Chicago rate basis applies and from Minnesota St. Paul basis. Adleta Paper Co. v. C. & N. W. Ry. Co., 31 I. C. C. 347, 348.

(x) Scale based on Pittsburg to Chicago rate which is 60 per cent of the New York to Chicago rate. Five Per Cent Case; 31 I. C. C. 351, 402.

(y) Nashville not considered as a southeastern common basing point, but as an Ohio and Mississippi River point. 31 I. C. C. Rates on Sugar, 495, 505.

(z) New York-Chicago basing rate on salt is 80 per cent of sixth class. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 571.

(aa) Rates from Louisville on whiskey are on Cincinnati basis. Greenbaum Co. v. L. & N. R. R. Co., 31 I. C. C. 699, 704.

(bb) Fares between Atlanta and Dalton for use in interstate transportation, termed "basing fares" in tariffs published for Southeastern lines. U. S. v. N. C. & St. L. Ry. Unrep. OP. A-691.

(cc) In the accepted adjustment of rates from the Ohio River Crossings the Evansville-Chicago Rate is made on the same basis as the Louisville-Chicago and Cincinnati-Chicago Rate. Drury Coal Co. v. I. C. R. R. Co. Unrep. OP. A-765.

(dd) Rates on lumber from basing points in Tennessee and Alabama to Newark, N. J., are based on the Chicago-New York rate. Atha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919.

II. ESTABLISHMENT.

§2. In General.

(a) Lower Mississippi River crossing include St. Louis, Louisiana and Hannibal, Mo., and Quincy, Ill. Mississippi River Case, 28 I. C. C., 47, 48.

(bc) The system commonly in use in the southeast of making rates to local or non-competitive points is by making such rates higher than those to common or competitive points by certain differentials or locals. Mayor and Council of Vienna v. G. S. & F. Ry. Co., 28 I. C. C., 173, 174.

(cc) Divisions accruing to more distant common or basing points accepted as rates to non-competitive points. La-Grange Chamber of Commerce v. A. & W. P. R. R. Co., 28 I. C. C., 178, 182.

(d) There are no basing points, properly so-called, in Carolina territory, unless Columbia and perhaps the ports be so treated. The basing point system is of general application in southeastern territory. Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C., 339, 344.

(e) Establishment of rates on mileage basis instead of group adjustment may not be warranted by commercial conditions. Arizona Corporation Commission v. A. T. & S. F. Ry. Co., 28 I. C. C., 428, 430.

(f) Complaining places may be all in active competition with nearby basing points and adversely affected by the advantages which the latter enjoy in the matter of freight rates. Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C., 433, 438.

(g) Percentage rates are based upon distance. Rates to the various percentage groups are determined by short-line mileage to the more important points located within those groups. Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C., 511, 512.

(h) Mileage scale applicable to class rates prescribed by Commission without fixing uniform relation between classes. Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 28, I. C. C., 563, 565.

(hh) Transit is less desirable than the breaking of rates. At rate-breaking points the dealer or miller may ship by any line to any market regardless of the route of the inbound movement, while at transit points the commodity must go to the markets reached by the extension of the route of the inbound movement. In the endeavor to prevent substitution of local grain for transit grain, the carriers also require accounts of stock in hand and points from which procured, all of which is costly and annoying to shippers. At rate-breaking points this burden of policing is avoided, because no substitution at such points can operate to defeat tariff rates. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 378.

(i) Rates from Indiana coal fields to all points on the line of the Chicago & Northwestern R. R. in Illinois, not affected by competition, are made upon combination of proportional rates to Chicago plus the local rates to destination. the latter based on or approximating the Illinois distance scale. American Coal & Supply Co. v. C. & N. W. Ry. Co., 30 I. C. C. 492, 493.

(j) In constructing through rates from Minnesota Transfer, Minn., to southern Michigan groups, the sum of the intermediates via the gateway making the lowest total is adopted as the through rate, and this is applied via all gateways or routes. Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-601.

(k) Rates to many intermediate points are constructed on basis of lowest combination and while higher than rates to base points are yet lower than rates made on basis of the mileage scale. Rates on Sugar, 31 I. C. C. 495, 501.

(l) Commission can not sanction a basis for making rates which will result in utter disregard of the rule of amended fourth section. Rates on Sugar, 31 I. C. C., 495, 501.

(m) Joint through rates for long distances should not be made by adding to the basing-point rate either the full local or relatively higher differentials. Atha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919.

(n) Cancellation of application of the Chicago basis of class rates from Porter, Crocker, and McCool, Ind., to points in Iowa, Minnesota, and South Dakota, leaving higher combinations in effect, justified. Class Rates from Porter and Other Stations in Indiana, Unrep. Op., A-940.

(o) The result of the Commission's decisions in the past has been to preserve the uniformity of rates in effect

through upper and lower crossings of the Mississippi River. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594.

III. REASONABLENESS.

See Reasonableness of Rates.

§3. In General.

(a) The fact that a transit is necessary cannot justify an unreasonable difference between rates to upper and lower crossings. Mississippi River Case, 28 I. C. C., 47, 57.

(b) Percentage rates between interio Iowa points and Chicago found unreasonable and carriers required to submit for approval a revised basis of such rates grading the 80-cent Missouri River scale back across the state. Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co., 28 I. C. C., 76.

(c) Basing point system does not require that joint through rates over long distance to local or non-competitive points shall be made by adding to basing-point rates either the full locals or high differentials. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C., 154, 165.

(d) From eastern ports the ocean and rail rates through Norfolk to Chattanooga are the same as those to Atlanta through Savannah or Charleston. Atlanta Journal Co. v. S. A. L. Ry., 28 I. C. C., 186, 189.

(e) To apply the same percentage relation in class rates in every part of the country would create confusion and discrimination instead of securing uniformity and equal treatment. Iowa State Board of R. R. Comrs. v. A. E. R. R. Co., 28 I. C. C. 563, 565.

(f) If discrimination were removed by extending the rate-breaking system, the final result would be that grain rates would be made on an arbitrary mileage basis without reduction in the rate per ton mile proportional to the length of the haul. Such a result may finally be reached in rate-making, but the industries and commerce of the country are now established on the present basis, and great commercial hardship would inevitably attend the abandonment of the present system. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C., 376, 379.

(g) The percentage principle has been long in effect between east and Central Freight Association territory, and uniformly approved by the Commission. Rates on Potash and Other Commodities, 29 I. C. C., 626, 628.

BILLS OF LADING.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§2. Recommendation of certain forms.
II. DUTY OF CARRIER TO ISSUE.
§2½ In general.
§3. Rail-and-water transportation.
§4. At transit points.
§5. One lading for several shipments.
III. CONSTRUCTION.
§6. In general.
§7. Statement of weight.
§8. Statement of shipping point.
§9. Conflicting provisions.
(1) Between rate and route.
(2) With tariff.
(3) With shipping ticket.
§9½. Inspection.
§10. Route designated by shipper.
IV. LIMITATION OF LIABILITY.
§11. In general.
V. ORDER—NOTIFY SHIPMENTS.
§12. In general.
VI. REPARATION AND DAMAGES.
§13. In general.
§14. Correction of bill of lading.

CROSS REFERENCES

See Classification, §1 (c); Export Rates and Facilities, II; Foreign Commerce, §½ (a), §2 (e), (f); Loss and Damage, I, §6 (u), (v); Storage, §1 (a), §2 (l); Through Routes and Joint Rates, III, §12 (a); Transportation, §5 (f); Water Carriers, §3 (e);

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I.

(a) The Commission cannot order the establishment of proportional rates to be applied to shipments billed locally to La Tuna and El Paso, at which points new bills of lading will be taken out calling for transportation to destinations in Texas under rates not filed with the Commission. Mesilla Valley Produce Ex-

change, Inc., v. A. T. & S. F. Ry. Co., Unrep. Op. A-229.

(b) Waiver of provision in Uniform Bill of Lading limiting to 4 months the time within which claim for loss or damage or for delay, must be presented by shippers. In re Bills of Lading, 29 I. C. C. 417.

(c) Commission has authority to permit waiver of tariff provisions as to time limit within which claims must be presented. In re Bills of Lading, 29 I. C. C. 417.

(d) Duty of delivering carrier to correct errors in billing made by agents of initial carrier due to wrong description of container. Wolverton v. U. P. R. R. Co., 31 I. C. C. 23, 24.

§2. Recommendation of Certain Forms.

(a) Representatives of carriers and shippers alike appeared before the Commission, joining in request for approval of a waiver by the carriers of the provision in the uniform bill of lading that claims for loss, damage or delay must be presented within four months. This provision had been incorporated into both the uniform bill of lading, used in Official and Western Classification territory, and the standard bill of lading used in Southern territory. In the case of the uniform bill it had been embodied in the freight classifications of carriers and thus made a part of their tariff schedules. The provision had, from a variety of reasons, particularly doubt as to its legality, been disregarded by many of the carriers, thus leading to widespread and serious discrimination. The legality of the provision having been sustained by the courts, however, all parties thought best, in view of the past discriminations, to waive the limitation as to past claims. HELD, that the Commission is without authority to order carriers to disregard their tariffs, nor does it feel justified in acquiescing in the adjustment of matters brought into this condition by disregard of tariff provisions, except from the necessity of the situation, where to do otherwise must leave uncorrected grossly unjust and widespread discriminations. To prevent such results the carriers should deal with all claims presented prior to December 1, 1913, and all claims accruing within two years prior to the report of the Commission and filed by April 1, 1914, upon their merits without regard to the period of limitation fixed by the tariff. Bills of Lading, 29 I. C. C., 417.

II. DUTY OF CARRIER TO ISSUE.

See Through Routes and Joint Rates, §12.

§2½ In General.

(a) A common carrier cannot be required to issue a new bill of lading, concealing the identity of the original shipper, on freight reconsigned at the end of its line. Jung & Sons Co. v. L. & N. R. R. Co., 31 I. C. C. 455, 457.

(b) Complainant alleged that defendants' refusal to issue new bills of lading in exchange for the original ones where cars were reconsigned at the termini of their lines antedating the arrival of the car so as to conceal the names of the original shippers, was unreasonable and discriminatory, and asked reparation. HELD, that although the practice which complainant seeks to have established might be of considerable advantage to a broker from a commercial standpoint, it is not a thing which can be demanded or required of a carrier as a matter of right. Reparation denied and complaint dismissed. Jung & Sons Co. v. L. & N. R. R. Co., 31 I. C. C. 455.

(c) Through bills of lading should be issued by originating carrier when dock is specified at which delivery is desired. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C., 272, 281.

III. CONSTRUCTION.

§6. In General.

(a) When through bills of lading issued by a carrier are recognized by the other carriers participating in a transportation, a through route is created. Swift & Co. v. P. R. R., 29 I. C. C., 464, 466.

(b) When there is no notation on the bill of lading indicating shipments are for export, the higher domestic rate is properly assessed. Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co., 28 I. C. C., 697, 700.

(c) Complainant, when relying upon the original bill of lading, which contained an erroneous car number, is not entitled to reparation, because not shown to be the fault of the carrier. Scattergood & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A412.

(d) A bill of lading is not conclu sive, even though unqualified, and a carrier is not estopped from showing that the amount or quantity stated was never in fact delivered to it for transportation. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C. C. 511, 515.

(e) The shipping order and the bill of lading taken together, constitute the contract of transportation. Loomis v. N. Y. C. & H. R. R. Co., (N. Y. 1915), 108 N. E., 837, 838.

§9. Conflicting Provisions.

See Conflict.

(2) With Tariff.

(a) In previous cases and conference rulings Commission has held that when both rate and route are inserted by shipper in bill of lading and they do not coincide, it is the duty of initial carrier's agent to ascertain from shipper before forwarding shipment whether instructions as to rate or route shall govern. Bangor National Slate Co. v. L. V. R. R. Co., Unrep. Op. A-794.

§9. (3) With Shipping Ticket.

(a) Where bills of lading and shipping orders are prepared by the shipper and the shipper notes upon the bill of lading certain instructions which it fails to note on the shipping order, the carrier cannot be held liable for misrouting if it complies with the instructions shown on the shipping order. American Agricultural Chemical Co. v. B. & A. R. R. Co., 28 I. C. C., 398, 401.

§9½. Inspection.

(a) Bill of lading contained the following clause: "Hold Chicago for inspection. Allow inspection." The shipment was not held and the shipment reached its original destination before reconsignment instructions were received. HELD, charges collected were not unreasonable. Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A462.

§10. Route Designated by Shipper.

See Routing and Misrouting, §7.

(a) When a shipper prepares a bill of lading providing for the carriage of property to a particular destination, and marks a different and erroneous address on the package, the carrier will not be held responsible for the freight charges incurred in transporting the property to the distination shown on the package. although the correct destination is shown on the bill of lading. Brackett Co. v. G. N. Exp. Co., 29 I. C. C., 667, 668.

(b) Where bills of lading and shipping orders are prepared by the shipper, and the shipper notes upon the bill of lading certain instructions which it fails to note on the shipping order, the carrier cannot be held liable for misrouting if it complies with the instructions shown on the shipping order. American Agricultural Chemical Co. B. & A. R. R. Co., 28 I. C. C., 398, 401.

(c) Shipper inserted in bill of lading wrong car number. Returned upon discovery of the error. Carriers collected the published rate from point of origin to destination and return. Not in violation of Act, and complaint dismissed. Swedish Iron & Steel Corporation v. Bush Terminal Co., Unrep. Op. A-323.

(d) Where goods are tendered with a bill of lading showing the route, but no rate, and the goods are moved as routed, and the consignee pays the legal rate over that route, and thereafter files a claim or demand against the carrier, alleging that a lesser rate was the full lawful rate over another and different route, and that the carrier had contracted with him through its agents to meet this competitive rate, and a refund is made to the consignee, such payment, made either by mistake of the carrier or through the illegal act of an agent of the carrier, may be recovered in a proceeding brought for that purpose. C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318.

IV. LIMITATION OF LIABILITY.

See Loss and Damage, §9.

§11. In General.

(a) Where a consignor in tendering a shipment for transportation indorses a 'ow valuation on the bill of lading to obtain a lower rate applicable upon release as to value, such action constitutes notice to the carrier's agent to that effect, even though the shipper labors under a misapprehension as to the correct basis of the agreed value. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C., 109, 111.

(b) The Carmack amendment expressly prohibits any exemption from the obligation to forward shipments within a

reasonable time, and a stipulation in a bill of lading of a carload of strawberries that "No carrier is bound to transport such property by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable dispatch" will, if capable of being construed as inconsistent with such liability, be clearly ineffectual. N. Y. P. & N. Ry. Co. v. Peninsula Produce Exchange (Md. 1914), 89 Atl. 433, 436.

(c) A provision in a bill of lading that "claims for loss, damage or delay must be made in writing to carrier at point of delivery, or at point of origin within four months after delivery of property, or in case of failure to make delivery, then within four months after reasonable time for delivery has elapsed," is reasonable and valid. Peninsula Produce Exchange v. N. Y. P. & N. Ry. (Ind., 1914), 89 Atl. 437, 438.

(d) Denial of liability on the part of a traffic manager, solely upon the ground that delivery of the freight was found to have been made in due time, constitutes a waiver of a clause in the bill of lading that claims for loss or damage must be made within four months after delivery of the property, or after a reasonable time to make delivery has elapsed. Peninsula Produce Exchange v. N. Y. P. & N. Ry. Co. (Ind., 1914), 89 Atl. 437, 438.

(e) Under the Carmack amendment, a stipulation in a bill of lading that the initial carrier and connecting lines shall not be liable for damages or delay of goods occasioned by the breaking down of bridges, etc., and that in no event shall the initial carrier or any connecting line be held liable for the safe and proper carriage of goods beyond its own line, is without effect. G. C. & S. F. Ry. Co. v. Brackett-Fielder Mill & Grain Co. (Tex. Civ App., 1914), 162 S. W. 1191, 1192.

(f) Though a carrier may limit its liability, it is liable for negligent injury to an interstate shipment, though its bill of lading seeks to restrict its liability to the invoice price, the shipper receiving no consideration therefor. I. & G. N. Ry. Co. v. Rathblath (Tex. Civ. App., 1914), 167 S. W. 751.

(g) In the absence of anything in the Carmack Amendment specifically condemning the practice, or declaring unlawful a receipt or bill of lading containing the socalled "Shippers load and count" provision, it cannot be held that that Act overturned it. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C. C. 511, 513.

(h) The "shipper's load and count" provision is not such a limitation upon carriers' liability as is contemplated by the prohibitions of the Cummins Amendment. It does not appear that this rule operates to limit the liability of the carrier for the full value of the property shipped, but, in its application to a claim for loss because of alleged failure to deliver the whole amount transported, has the effect of placing the burden upon the shipper who loads on his private sidetrack to prove that the amount specified was loaded and that a less amount was taken out of the car by the consignee; whereas in the case of a receipt not so qualified the burden is upon the carrier to prove that the amount specified in the bill of lading was either not in fact loaded, or was delivered, or otherwise to settle for the full value thereof. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C. C. 511, 513.

V. ORDER—NOTIFY SHIPMENTS.

See Demurrage, §7.

§12. In General.

(a) Complainant, a manufacturer of roofing tile, assailed as unreasonable and discriminatory, defendants' rule embodied in a circular of instructions to freight agents, requiring agents to decline to receive shipments of freight "to order" with instructions to notify parties residing elsewhere than at the point to which shipment is made, except export shipments and shipments of cotton, cotton linters or regins. Traffic in the Southeast is handled largely on card waybills, containing condensed information as to point of origin, destination, consignees, etc., and confusion would result from showing thereon a notification point other than that of destination. The exception as to export traffic was established because such traffic is usually promptly unloaded at the ports for delivery to water carriers. The exception as to cotton, etc., grew out of a practice among New England cotton mills when there were no mills in the South, of considering a general office for a group of mills as a common destination point. HELD, that the rule was not unreasonable, nor discriminatory because of the exceptions thereto. To make an exception of roofing tile, how-

ever, would be to discriminate against other like kinds of traffic. The rule should be filed with the Commission, modified so as to require agents to accept shipments, as a common carrier cannot decline traffic offered to it, and the exceptions as to cotton should be eliminated. The carrier may provide that it will not execute a bill of lading which contains a provision for notifying a person at a point other than the destination of the shipment. Ludowici-Celadon Co. v. A. C. L. Ry. Co., 28 I. C. C. 693.

(b) Carriers may provide rule that bill of lading will not be executed which contains a provision for notifying a person at a point other than the destination of shipment. Ludowici-Celadon Co. v. A. C. L. R. R. Co.. 28 I. C. C. 693, 696.

(c) A car billed "to order" is notification to the carrier that title to the property remains in the consignor until delivery of the bill of lading, properly endorsed. And such a rule is not found unreasonable. Scattergood & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A412.

(d) Rule of western classification under which carrier declines to issue order bills of lading for shipments consigned to one point with instructions to notify another party at another point, not found unreasonable. Michigan Steel Boat Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-832.

(e) Following Ludowici-Celadon Co. v. A. C. L. R. R. Co., 28 I. C. C., 693, rule of western classification under which carrier declines to execute order bills of lading for shipments consigned to one point with instructions to notify another party at another point, not found unreasonable. Michigan Steel Boat Co. A. T. & S. F. Ry. Co., Unrep. Op. A-832.

VI. REPARATION AND DAMAGES.

See Reparation.

§13. In General.

(a) Plaintiff shipped goods from Vancouver, Wash., to Canton, Ohio, via the S. P. & S. Ry. and Penn. R. R., and forwarded the bill of lading to the consignee. The latter returned the bill of lading to plaintiff with notice that it would not receive the goods; whereupon plaintiff gave notice to the S. P. & S. Ry. of the consignee's action, surrendered to it the bill of lading, and directed a return of the goods. The S. P. & S. Ry. communicated such direction to the Penn. R. R., but the latter failed to observe it and eventually delivered the goods to the consignee, and the goods were lost to plaintiff. Plaintiff brought action against the S. P. & S. Ry. for the damages. HELD, that plaintiff was the lawful holder of the bill of lading within the provisions of the Carmack Amendment; that the Penn. R. R. in delivering the goods to consignee without production of the bill, did so at its peril; and that the S. P. & S. Ry., as initial carrier, was liable in damages. Coovert v. S. P. & S. Ry. Co. (Wash. 1914), 141 Pac 324.

BLANKET RATES.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. LEGALITY OF GROUP RATES.
§2. In general.
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CROSS REFERENCES

See Advanced Rates, §5 (2), (c), (m); Basing Points and Lines, §1 (q), §2 (e); Differentials, §2½ (c), §7 (b); Distance Rates, §1 (b), §3 (c); Evidence, §58 (e); Long and Short Hauls, §5 (e); Reasonableness of Rates, §7½ (d); Special Contracts, §2 (a); Tariffs, §7 (v), §9 (a), (b).

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) Seventeen carriers applied to the Commission for relief from the provisions of the 4th section, their applications covering the whole territory from the Atlantic seaboard to the Pacific coast and the Gulf of Mexico, embracing practically the entire country. They asked authority to continue all rates on the tariffs presented, from Atlantic to Pacific and contrariwise, and to and from interior points, lower than rates concurrently in effect from and to intermediate points. The Commission refused to grant their petitions unqualifiedly, but entered an order permitting in some respects a charge of a lower rate for the longer haul than was asked for the shorter, provided a proportionate relation was maintained between them, the proportion to be upon the basis of percentages which were fixed. For the purpose of the order the Commission adopted in substance a division of the entire territory into separate zones, which division had been resorted to by the carriers for the purpose of establishing the rates in relation to which the petitions were filed. The carriers contended that under the 4th section as amended by the Act of June 18, 1910, the Commission was limited to ascertaining the existence of competition, and to authorizing the carrier to meet it, without any authority to do more than exercise its general powers concerning the reasonableness of rates at all points. HELD, that under the 4th section as amended, the Commission is not only authorized to consider competitive conditions and their relation to persons and places, but also the right to do that by which alone it could be exerted, namely, the establishment of zones and percentages. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 994; 234 U. S. 476; 58 L. ed.—; reversing 191 Fed. 856, enjoining the orders of the Commission in the so-called Intermountain Cases.

(b) The system of group-rate making was early recognized by the Commission as proper except where some shippers or consignees are damaged and others are correspondingly benefited, and the Commission has consistently refrained from breaking up a group where it has not been made to appear that the party seeking such action is actually damaged by the discrimination that results from the group rate. Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C. 645, 657.

II. LEGALITY OF GROUP RATES.

§2. In General.

(a) That the grouping of Dallas with Texas points which are farther distant from St. Louis may work to its detriment is no argument against equitable adjustment of rates to Texarkana, Tex.-Ark. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569. 576.

(b) While a grouping of producing points that would result in unreasonable rates is not to be sanctioned, the system of grouping possesses many advantages and generally promotes competition. Pub. Utilities Com. of Idaho v. O. S. L. R. R., 33 I. C. C., 103, 106.

(c) The propriety of a group rate in any case must depend upon the conditions upon which it is predicated. Oklahoma Cottonseed Crushers Assn. v. M. K. & T. Ry., 35 I. C. C. 94, 106.

§3. Justification.

(a) To justify placing towns in different rate-making groups, there should be some natural boundary line between them. Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 170.

§4. Public Benefit.

(a) The group or zone principle of rate making is often of mutual advantage to shippers and carriers and will not ordinarily be disturbed where the rates are reasonable and non-discriminatory. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71. 81.

(b) Grouping or blanket arrangements are of great advantage to the public. Lumber Rates—Southern Ry. Points to Eastern Points. 31 I. C. C. 244. 253.

(c) There is perhaps greater warrant for the group or blanket system of rate making when applied to an area containing natural resources than in any other case. There may be a valid question whether unqualified approval should be accorded the establishment of a common rate from points differing materially in distance to a common market when the producing industries, could, without prejudice to consumers, be located at nearer points involving a lesser aggregate cost of transportation. Unless warranted by clear advantage to con-

sumers, a minimization of waste involving unnecessary transportation cost should be sought. When, however, materials are found only in delimited areas and consumed throughout widely extended markets—in which case there is no possibility of shifting the sources of supply—there is much to be said for blanketing the rates from such a common source to the gateways where these materials radiate to consuming markets. Such an arrangement tempers to the common benefit of consumers generally the fortuitous advantage conferred by nature upon the localities in which such natural resources are found. Wisconsin & Arkansas Lumber Co. v. St. L. I. M. & S. Ry. 33 I. C. C., 33, 37.

(d) Blanket rates from a productive region allow dealers wide range in their choice of material, pit in competition producers throughout the producing area, and by stimulating rivalry provide a guaranty against exorbitant prices and undue profits. Therefore the blanket system of rate making, if ever to be approved, must commend itself under such circumstances. Wisconsin & Arkansas Lum. Co. v. St. L. I. M. & S. Ry. 33 I. C. C., 33, 38.

(e) If the cost of mining coal is considered by the carriers in fixing the rates from one district, the same consideration cannot lawfully be denied by the same carriers serving another district in which there are mines operating under the same conditions. San Toy Coal Co. v. A. C. & Y. Ry., 34 I. C. C., 93, 98.

(f) The fact that on one commodity moving outbound, several points constitute a single group is pertinent in considering the reasonableness of an adjustment on another commodity moving inbound under which such points are divided into two or more groups, but such a showing is not convincing, even though it appear that the second commodity is used largely in the manufacture of the first, in the absence of proof of substantial similarity of conditions, transportation and otherwise, surrounding their movement, for it might be that competition has influenced the establishment of an adjustment on the one which it would not be just to the carriers to require on the other. Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414, 421.

III. EXTENSION OF ZONE.

§6. In General.

(a) Groups designated for Colorado common points should be used as to Utah common points. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 199.

(b) In stating rates between remote sections, territorial groups of considerable extent must be employed. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 198.

(c) Rates to point upon edge of territorial group not fairly comparable with other rates. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 195.

(d) Augusta is in the southeastern territory, whereas Columbia is in the Carolina territory. To afford Columbia the same rates as Augusta, would be to take Columbia out of its own natural group. Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 343, 346.

(e) Although Illinois is divided into territorial groups, to which percentage rates are applied in case of most commodities, grain rates have not for some time been, and are not today, so stated. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555.

(f) Complainant attacked proposed joint through rates on coal by the B. & O. Ry., from mines on the Indian Creek Valley Ry. to Baltimore, Philadelphia, and points east 10c per ton higher than from mines in the Meyersdale group as unreasonable and discriminatory. The I. C. Ry., a short line of 24 miles, branching from the B. & O. Ry. at Indian Creek Junction, 7 miles east of Connellsville, Pa., had through rates on many commodities but not on coal, which moved to the junction on the 15c local rate. The B. & O. Ry. offered to establish a joint through rate 10c higher than the Meyersdale rate, allowing the I. C. Ry. a division of 15c, which it contended was not sufficient, demanding the Meyersdale rate from mines on its lines with a division of 20c. The Meyersdale group lies a few miles to the east of the Indian Creek group, and the B. & O. Ry. accepted the Meyersdale rate at points on its branch lines as far from the markets as are the Indian Creek mines. For steam purposes the Indian Creek coal is as good as the Meyersdale, though the

latter brings a higher price. Meyers dale coal cannot be coked, while Indian Creek coal can be made into an inferior coke which competes with Connellsville coke to some extent. The Connellsville group takes rates 25c higher than the rate applicable to the Meyersdale group, but the latter rate had been extended westward to Indian Creek Junction. The Rogers Mine on the I. C. R. R. is 271.5 miles from Baltimore and 371.7 miles from Philadelphia. The Green Hill Mine, the most distant in the Meyersdale group from eastern points, is 253 miles, from Baltimore over the Penn. Ry. and 270.2 miles by the B. & O. R. R.; and from Philadelphia it is 274 miles over the Penn. Ry., and 370.4 miles by the B. & O. Ry. The Penn. Ry. thus fixes the rates. The average distance from the Meyersdale group is 246 miles, while from Indian Creek it is 273.6 miles. HELD, that the rates proposed by the B. & O. Ry. were reasonable. Connellsville being but 7 miles from Indian Creek Junction, the extension of Meyersdale rates to I. C. Ry. points would leave the B. & O. Ry. without any justification for withholding like rates to Connellsville. Complaint dismissed. Rogers & Pinkney v. B. & O. Ry. Co., 30 I. C. C. 32.

(g) Complainants, greenhouse proprietors, attacked the rate of 40c per net ton on bituminous coal from Galewood an interchange point within the Chicago, Ill., switching limits, at which defendant receives coal from connecting lines, to Morton Grove, Ill., a distance of 12 miles, as unreasonable and discriminatory. Complainant uses about 30,000 tons of coal annually, 75 per cent coming from West Virginia and other Eastern points. The coal moved under combination rates to and from Chicago: the rate of $2.05 from West Virginia to Chicago being applied to Galewood. The rate to Morton Grove includes switchin and delivery on complainant's sidetracks Several competing florists were accorded the Chicago rate on coal, though more distant from the Chicago transfer poin than Morton Grove from Galewood; while to others on defendant's line the rate from Galewood was 20c for distances ranging from 5.9 to 9.6 miles, the originating carriers absorbing $4 per car of 30 tons and 10c per ton for all in excess, resulting in a net rate about 10c in excess of the rate to Chicago. No competitors, however, were receiving coal at the 20c rate, no florists similarly situated were accorded a lower rate than complainants, and on average cars of 40 tons, or even 50 tons, defendant, under a rate of 10c which complainant contended for as just and reasonable, would receive not more than $5 per car, or less than its reciprocal switching charge. HELD, that adjustment of rates in the Chicago district being exceedingly complex, the Commission should not require a reduction in any specific rate except after a careful examination of all the facts, both respecting the rate itself and its relation to the general adjustment. No opinion expressed respecting the reasonableness of the rate; but the same held not discriminatory Complaint dismissed. Poehlman Bros. Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 89.

(h) Complainant attacked the group rate of $1.75 on shipments of bituminous coal from the Clearfield district of Pennsylvania to Geneva, N. Y., as unreasonable and discriminatory, and prayed that a rate of $1.25 be established. A rate of $1.25 was effective on coal shipped from Arcadia, Pa., and transhipped at Geneva by canal. On the establishment of complainant's coke plant at Geneva to make foundry coke this rate was applied by the N. Y. C. lines to coal "coked in transit" at Geneva, and the same privilege was subsequently accorded by the lines from other points in the Clearfield district. The manufacture of foundry coke proving unprofitable, complainant confined itself principally to the production of heating coke, most of which was sold in Geneva. The outbound coke tonnage falling off, the carriers canceled the $1.25 rate. Complainant had established its coke plant at Geneva to produce cheap gas and thus win a gas fight at Auburn. From Sagamore, the principal point of origin, to Geneva, at the $1.25 rate the divisions were 76c, 2c and 47c to the B. & S. R. R., Erie R. R. and L. V. R. R., for distances of 188.91, 29 and 84.2 miles, yielding 4.13 mills per ton mile; and under the subsequent $1.75 rate divisions were 83c, 25c and 67c, the distance being 11.5 miles greater. All the equipment was returned empty. Though the rate of $1.75 to the Geneva group was 10c above that to Dresden, the next station south, 80,000 tons moved in 1913 at the group rate. The adjustment between the Geneva group rates and those of the New York groups more remote

from points of origin had existed for nearly 30 years. HELD, (1) the rate of $1.75 for transportation of coal from mines in the Clearfield district to Geneva, N. Y., was neither unreasonable nor discriminatory, and that a rate adjustment existing so long should not be lightly disturbed; (2) that withdrawal of a rate of $1.25 per ton applicable only on coal to be coked in transit at Geneva, N. Y., was justified on the ground that it was a preferred rate to a single city and industry, and not a true milling-in-transit rate. Complaint dismissed. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573.

(i) Wherever group rates are established there are points just over the group line that take higher rates. Rogers & Prinky v. B. & O. R. R. Co., 30 I. C. C. 32, 33.

(j) The conditions which induced the blanketing of the mainland points on the carrier's own rails clearly do not argue for the involuntary extension of this basis to the water-locked points which are off their rails. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 369.

(k) Carriers may lawfully make a rate applicable to a group of points within a defined zone and treat them all as one point for rate-basing purposes, but the proximity of points just without or beyond this zone cannot be ignored when the question of through rates to the latter points comes up for consideration. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 82.

(l) Rehearings were granted of Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 669; Kansas-Iowa Brick Rates, 28 I. C. C. 285, involving the reasonableness of rates on brick (except bath, tile and enameled) from points in Kansas gas belt to Iowa destinations on the lines of the C. B. & Q. R. R. and C. R. I. & P. Ry. The gas belt is in southeastern Kansas and extends about 70 miles north from the Oklahoma line and about 20 miles west from the Missouri line. It is served by the A. T. & S. F. Ry., St. L. & S. F. Ry. and M. K. & T. Ry., of which only the first has any line in Iowa and that only some 20 miles. All of these carriers reach Kansas City, Mo., there connecting with a majority of the railways serving Iowa, namely, the C. B. & Q. R. R., C. R. I. & P. Ry., Wabash, C. & A., C. G. W. and Q. O. & K. C. Rys. The rates on brick to Kansas City and St. Louis from Gas Belt points were 5c and 10c per 100 lbs. respectively. Since the decisions in the original cases the Rock Island has opened its cut-off from Allerton, Iowa to Carlisle, Iowa, thereby shortening its line to Des Moines from Kansas City about 94 miles and was willing to maintain the 10c rate to Des Moines and intermediate points, both on the cut-off and on the longer line, also to points on its line from Des Moines to Council Bluffs, but desired to make the increase of 12½c formerly proposed to its other stations in Iowa. At the 12½c rate the earnings of the Rock Island would be 5.6 mills and at the 10c rate 4.5 mills on a typical haul. The complainant asks that the Commission reverse its decision in the Standard Vitrified Brick case and establish the 10c rate to Burlington points in Iowa although previously 12½c had been held reasonable. It is testified that their sales to these points have decreased materially since the increase in the rate, but it is found that this may have been brought about by increase in competition. HELD, while this condition makes it more difficult for complainant to compete for the business in question, it forms no basis for requiring the C. B. & Q. Ry. to establish or the Rock Island to maintain a rate, unless it should be found, upon all the facts appearing, to be reasonable. Upon consideration of all the facts, the unreasonableness of the 12½c rate to Burlington points has not been shown, and the Rock Island is justified in the increase which it desires to make. Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 208.

(m) The fact that a change in group rates is made does not demonstrate that rates resulting therefrom are just and reasonable. Class and Commodity Rates from Stations in Me., 31 I. C. C., 18, 21.

(n) Commission would not be justified in holding that blanket rate should be prescribed to points in southeast. Pacific Fruit Exchange v. S. P. Co., 31 I. C. C., 159, 161.

(o) Commodity rate from or to points that are grouped or blanketed might exceed class rate from one or more points and still be reasonable. Rice Rates from Helena, Ark., 31 I. C. C., 614, 615.

(p) Grouping is done with a reasonable disregard of distance. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C., 623, 628.

(q) Complainant sought a division of the Southwestern Yellow-Pine blanket. This was bounded by the Arkansas and Mississippi rivers, the Gulf of Mexico, and a line on the west drawn through Kansas City, Mo., and Houston, Tex. Lumber was shipped north through five gateways: Thebes, Cairo, Memphis, St. Louis, and Kansas City. The rate to Cairo and Thebes was 16c, to Memphis 14c, to Kansas City 24c, and to St. Louis 19c. Of the total production of yellow pine, Arkansas furnished but 8½ per cent. **Substance of Complaint:** Complainants sought a reduction of 4c in the rates to all gateways except Kansas City, and 6c to Kansas City; and asked that the yellow-pine blanket be divided at the Arkansas-Louisiana state line, and that the northern half be given proportional rates to certain gateways lower than those from the southern half; alleging discrimination in the rates in favor of the areas south of the Arkansas-Louisiana line where rates to the gulf were on a mileage scale and east of the Mississippi river. **Reasonableness of the Blanket Adjustment Considered.** Transportation conditions in the producing areas east and west of the Mississippi River were essentially dissimilar. The blanketed area was about 400 miles long and 300 miles wide. but was practically coincident with the growth of yellow pine in the southwest. From Kensett, Ark., 35 miles north of the blanket area, the rate to Kansas City was 17c for a haul of from 530 miles yielding 6.4 mills per ton mile as compared with the blanket rate of 24c, yielding 7.5 mills on an average haul of 635 miles. The average haul from the entire blanket area to the gateways was 589.1 miles, yielding 6.035 mills per ton-mile; from Arkansas, 509 miles, yielding 7.360 mills, and from Louisiana and Texas, 608 miles, yielding 5.764 mills. On shipments from Little Rock, Ark., via Memphis, Tenn., to Branson, Galena, and Crane, Mo., the ton-mile revenue was 13.09, 12.20, and 11.8 mills, respectively, for distances of 275, 295, and 305 miles; as compared with earnings of 10.00, 10.16, and 8.88 mills on shipments from Omaha, Nebr., via East St. Louis to Kanorado, Kansas, Burlington, Colo., and Egbert, Wyo., for hauls of 400, 413, and 484 miles. **Analysis of Alleged Unjust Discrimination:** From 133 stations on the L. Ry. & Nav. Co., the rate to Cincinnati via New Orleans was 21c being 2c less than the rate to Cincinnati via other lines within the blanket. While from 275 stations on the V. S. & P. Ry. the rate to Cincinnati was 23c, the St. L. I. M. & S. Ry. had not met that rate. The K. C. S. Ry. did not apply the blanket rates in question on shipments to Kansas City, Mo., at points north of Ashdown, Ark., nor did the C. R. I. & P. Ry. on shipments from Plainview and Biglow, Ark., From Monroe and Rayville, La., junction points on the V. S. & P. Ry., the St. L. I. M. & S. Ry quoted a rate of 23c to Cincinnati. **Complainants' Profits Consumers Prices.** Arkansas mills furnished but a small proportion of the supply of yellow pine, and the lowering of rates would result in but little increase in output, while the differential accorded would go into complainants' pockets. HELD, (1) that the size of the blanket was no ground for its discontinuance; (2) that the division of the blanket area would be no fairer on the basis of rail distance than the existing arrangement; (3) that partition might properly be denied on the ground of the doubtful permanence of any differential established; (4) that complainants had not shown that the blanket area or rates were unreasonable or otherwise unlawful; (5) that the rates to Cincinnati and Kansas City had no bearing on the rates in issue; but that export rates from Arkansas to the Gulf should be established; (6) that the complainants were not entitled to a partition of the blanket from the standpoint of the public interest; (7) that with the exceptions noted the blanket rate arrangement attacked was neither unlawful nor discriminatory. Complaint dismissed. Harlan & Meyer, C. C., dissented. Wisconsin & Arkansas Lumber Co. v. St. L. I. M. & S. Ry. Co., 33 I. C. C., 33.

(qq) Where a complainant asks for a specific partition of a blanket adjustment and additional prayer for "such other rates as the Commission may from the evidence deem just" can hardly be construed to permit complainant to shift its position completely and ask that a mileage scale be applied instead. Wisconsin & Arkansas Lumber Co. v. St. L. I. M. & S. Ry. Co., 33 I. C. C., 33, 35.

(r) Following the 1911 season the entire state of California was blanketed with exception of a few points east of Sacramento. Pacific Fruit Exchange v. S. P. Co., 32 I. C. C. 48, 49.

(s) Blanketing points of origin on rates to Pacific coast justified, but practice carries with it no obligation of blanketing same in establishing rates to intermediate points. Commodity Rates to Pacific Coast Terminals, 32 I. C. C., 611, 619.

(t) South St. Paul is recognized industrially as a part of St. Paul, and for rate-making purposes is grouped with St. Paul with respect to most commodities. Swift & Co. v. C. G. W. R. R. Co., Unrep. Op. A-785.

(u) Rate of $2.60 per net ton on soft lump coal from Buck, Okla., to Fort Riley, Kans., found unreasonable to extent it exceeded $2.25 which now applies from all points in group to Fort Riley. Reparation awarded. McAlester Fuel Co. v. M. K. & T. Ry. Co., Unrep. Op. A-839.

(v) The fact that the average haul increases in length as the timber is cut away in the nearest part of a blanket cannot be accepted as a justification for continual increases in the blanket rate, where the blanket was voluntarily created by the carriers. Where carriers have disregarded distances of several hundreds of miles in creating and maintaining a blanket they should not be heard to say that the gradual movement of the center of production is in itself a justification for an increase in the blanket rate. Moreover, under these circumstances comparisons of ton-mile earnings do not have the significance or the value which they ordinarily have. Rates on Lumber from Southern Points, 34 I. C. C. 652, 659.

§7. Equalizing Advantage of Location.

See Equalization of Rates, §3.

(a) Complainant attacked the commodity rate of 35c per 100 lbs. on potatoes in carloads from producing territory in Wisconsin and Minnesota to Coffeyville and Independence, Kan., as unduly prejudicial, compared with rates to Kansas City and Joplin, Mo.; Fort Scott, Chanute, Pittsburg and Parsons, Kan., and Bartlesville, Vinita, Afton, Fairland and Miami, Okla. Chanute, Parsons, Independence, Coffeyville and Bartlesville are approximately on a straight line running south by southwest from Kansas City, and are reached from Kansas City in the order named. Fort Scott and Pittsburgh are south of Kansas City and northeast of Coffeyville and Independence; Joplin is south of Kansas City and approximately east of Coffeyville and Independence, and Vinita, Miami, Afton and Fairland are south of Kansas City and southeast of Coffeyville and Independence. The M. K. & T. Ry. serves Ft. Scott, Chanute, Parsons, Coffeyville, Bartlesville and Vinita; the Missouri Pacific System serves Ft. Scott, Pittsburgh, Independence and Coffeyville; and the A. T. & S. F. Ry. serves Chanute, Pittsburg, Independence and Coffeyville. The distances to these points from Kansas City vary from 100 miles to 200 miles. The shipping points in Wisconsin and Minnesota are grouped. For traffic to points in southeastern Kansas and southwestern Missouri there are four groups; for shipments to Oklahoma points, ten. To points in northern Oklahoma, however, near the Kansas-Oklahoma line, the rates from many of these ten groups are the same. Of the groups constituted for Kansas and Missouri shipments, group 1 is primary and the rates from the other groups are made by the addition of differentials to the group 1 rates, varying from 1c to 5c. Groups 1, 2, 3, 7 and 10 are primary for shipments to northeastern Oklahoma. The rates to the various points of destination were: Kansas City 25c, Ft. Scott 28c, Pittsburg, Joplin, Chanute and Parsons 29½c, Independence and Coffeyville 35c; Vinita 32c; Bartlesville 33c, Afton and Miami 29c, and Fairland 28c. Under the present in-rate adjustment, complainant's competitors, located at Bartlesville, Tulsa, Vinita, Cherryvale, Chanute, Parsons, Iola, Pittsburg and Joplin, are able to invade the territory naturally tributary to Coffeyville and Independence at an advantage in the combination of the in-rate and the local rate outbound. A difference of 1c per bushel in the price quoted local dealers, deflects the business. At all points south and west of Coffeyville and Independence complainants have a distinct advantage, except at Tulsa, where Joplin has an advantage of 2½c over Coffeyville. At points between Chanute and Independence and Coffeyville, Independence and Coffeyville have an advantage of 1½c or more over Pittsburg, Joplin and Kansas City, except at the first station south of Chanute. Chanute, on the other hand, has commanding advantage over both Coffeyville and Independence as far south as Cherryvale, which is 30 miles south of Chanute, 9 miles north of Independence and 16 miles north of Coffeyville. At points immediately west of Chanute, Pittsburg, with a shorter through haul

than Coffeyville and Independence, but with a slightly greater local haul, has a commanding advantage over both places. Under the rate to Coffeyville and Independence its ton-mile earnings are appreciably higher than the earnings under the other rates considered. The ton-mile earnings from an average point of shipment through Kansas City, the short line, to Independence were 9.13 mills, and to Coffeyville 9.11 mills. To the other points the earnings varied from 7.17 mills to Fairland to 8.27 to Bartlesville. The distances from origin to destination are considerable, varying from 699 to 1,029 miles and the differences in distance to the several destinations small by comparison, varying from 99 to 194 miles. The traffic to Coffeyville and Independence averages 50 cars per season. Other traffic conditions are substantially the same, excepting the small differences in distances. It appeared, however, that from Kansas City to Fort Scott, a distance of 99 miles, the rate spread 3c per 100 lbs.; from Fort Scott to Pittsburg, 30 miles, and to Joplin, 56 miles, 1½c; from Kansas City to Chanute, Parsons and Pittsburg, an average distance of 131 miles, 4½c; from Chanute, Parsons and Pittsburg to Vinita, an average distance of 58 miles, 2½c; from the same three points to Coffeyville and Independence, an average distance of 36 miles, 5½c; from Kansas City to Joplin, 155 miles, 4½c; and from Kansas City to Coffeyville and Independence, an average distance of 167 miles, 10c. South of Coffeyville and Independence, farther, and over the rails of the Missouri Pacific system, the rate advanced from 35c per 100 lbs. at Coffeyville to 36c at Nowata, 23 miles from Coffeyville, and 37c at Claremore, 53 miles from Coffeyville. To the west and over the same line of railroad, Caney, which is 19 miles beyond Coffeyville, took a rate of 36c; Peru, 30 miles, 37c; and Cedarvale, 58 miles, 38c, which last rate obtained as a blanket rate for points beyond. The rates to Coffeyville and Independence, therefore, did not conform to defendants' alleged principle of "easy grading." Tested by comparative ton-mile earnings, the rates to Chanute, Pittsburg, Parsons and Vinita were approximately in line. Vinita was situated on the line of the M. K. & T. R. R. from Kansas City which branched off at Parsons and ran thence south to Denison, Tex., and other points, and was 52 miles beyond Parsons. Coffeyville was situated on the same railroad, but on the line from Kansas City which branched off at Parsons and ran to Oklahoma City. Coffeyville was 31 miles beyond Parsons. The traffic conditions were substantially the same from Parsons, Vinita and Coffeyville. From Parsons to Vinita, the rate on potatoes spread 2½c; from Parsons to Coffeyville, 5½c, an adjustment which was palpably unreasonable and unduly prejudicial to Coffeyville. HELD, that the commodity rate of 35c from group 1 points of origin in Wisconsin and Minnesota to Coffeyville and Independence was unduly prejudicial to the extent it exceeded the rate contemporaneously in force to Pittsburg, Chanute and Parsons, Kan., by 1½c per 100 lbs., and that the rate to Coffeyville should not in any case exceed the rate to Bartlesville, Okla. Reparation denied. Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C., 139.

§8. Proximity to Established Group.

(a) Douglas, Ga., which has a location similar to that of Fitzgerald, Ga., should not be excluded from the Fitzgerald group. Mayor and Council of Douglas v. A. B. & A. R. R. Co., 28 I. C. C. 445, 452, 453.

(bc) Complainant attacked the class rates of 43c, 37½c, 30c, 21½c, 16c and 13c for the six numbered classes, on shipments from Alton, Ill., to Henderson and Owensboro, Ky., as discriminatory compared with rates of 41c, 34½c, 25½c, 17½c, 15c and 12c charged on shipments from East St. Louis to the same destinations. Alton and East St. Louis take the same rates to Louisville, further distant. East St. Louis, Ill., lies on the opposite bank of the Mississippi River from St. Louis, Mo. Extending thence northwardly for six miles, a large manufacturing colony has grown up, consisting of Venice, Madison and Granite City, all within East St. Louis switching district. After an interval comes the Alton district, consisting of Wood River, Federal, Hartford, East Alton and Alton, the latter 21 miles from East St. Louis. These two groups are not recognized within the State of Illinois, and to northern points where rates are made with respect to the Illinois scale, Alton has the advantage. Alton asks that it be considered a part of the St. Louis manufacturing district and as such entitled to St. Louis rates in every direction, especially to points outside a radius of 100 or 150 miles from the point of origin, conceding that

to points within such radius to the South, East St. Louis is entitled to a lower rate, and that it should have the benefit of its nearer location on traffic moving northward within such radius. The traffic between the points involved consisted mainly of bottles, rated fifth class. Traffic from East St. Louis to Henderson and Owensboro moved over but two lines, the L. & N. and the L. H. & St. L. R. Rs., whereas that from Alton involved a three and sometimes a four-line haul, none of the lines that reach Alton serving Henderson and Owensboro. The L. & N. Ry. filed a fourth section application, seeking authority to continue lower rates to Louisville than rates concurrently in effect to Henderson and Owensboro. Having no direct line from Alton to Louisville, it received traffic from originating lines at East St. Louis, moving it via Evansville, Henderson and Owensboro, in connection with the L. H. & St. L. Ry., to Louisville, a distance of 319 miles. The short line from Alton to Louisville via the C. P. & St. L. Ry. and Southern Ry. was 292 miles, and that from East St. Louis, via the Southern Ry., 271 miles. Via the circuitous line of the L. & N. Ry. the distance was 435 miles, notwithstanding which it met the rate of the Southern Ry. to Louisville, while maintaining higher rates to Henderson and Owensboro, at distances of 196 and 226 miles from Alton. HELD, that the switching limits of East St. Louis need not be extended so as to include the Alton district, and that the rates from Alton to southern points may properly be made differentials over the rates from East St. Louis. The rates from Alton to Henderson and Owensboro should not exceed rates from the same point of origin to Louisville, Ky. Fourth section application denied. Alton Board of Trade v. C. & A. Ry. Co., 28 I. C. C. 589.

(d) Rate groups or blankets must terminate somewhere; but an abrupt break in the center of a territory 100 miles in extent, in which there are no substantial differences in natural conditions, and all of the shippers in which serve the same markets, produces an artificial relation which is indefensible. Mesilla Valley Produce Exchange, Inc., v. A. T. & S. F. Ry. Co., Unrep. Op. A229.

(dd) Complainant attacked the rates o flour and other grain products from Kansas, Nebraska, Oklahoma, Colorado, Iowa and Missouri. to Arizona, and asked that the California 65c terminal rate on flour be applied as a maximum at Arizona intermediate points, with the 12 per cent spread between the rates on wheat and flour prescribed in Valley Flour Mills v. A. T. & S. F. Ry. Co., 16 I. C. C. 73, whereupon defendants filed tariffs proposing to increase the 58c rate on wheat to Arizona points to $1. As illustrative of existing adjustments, the rates on flour from Hutchinson, Kan., to Arizona points westward from Holbrook to Phoenix, ranged from $1.05 to $1.12, as against a rate of 65c to California terminals, while the rate on wheat to Arizona points and California terminals was alike 58c, being graded up from 46c at Las Vegas and 52c at Albuquerque, N. Mex., into the California terminal rate, which is blanketed back over the states of California and Arizona as to main line points. To Phoenix, on a branch line of the A. T. & S. F. Ry., the rate from this Kansas group is 68c. Arizona millers needed northern wheat to blend with their inferior grade wheat. Wheat is raised in the Salt River Valley of Arizona, but is inferior to Kansas wheat and is obtainable only by the use of irrigation, the cost averaging $1.33 per 100 lbs., and the price obtained for it at harvest time being $1.75 per 100 lbs. Arizona millers ground in 1912 about 15,000,000 lbs. of home-grown wheat and 7,000,000 lbs. of wheat purchased in other states. The rate adjustment tended to encourage shipment of wheat to Arizona and discouraged flour shipments, to the detriment of Kansas millers. The rate on flour from Kansas City, Mo., to El Paso, Tex., was 50½c for 948 miles; to Salt Lake City, 56c for 1,237 miles; to Spokane, 70c for 1,655 miles; as against the rate of $1.12 from Hutchinson to Phoenix, a distance of 1,265 miles. HELD, that the imposition of higher rates on flour to Arizona intermediate points than to California terminals is without justification, and that such rates are unreasonable and unduly prejudicial to the extent that they exceed the terminal rates. Rates in proposed tariffs likewise found unreasonable and ordered canceled. Arizona Corporation Commission v. A. & N. M. Ry. Co., 29 I. C. C. 424.

(e) Complainants sought the application of terminal rates to shipments of shingles originating at water-locked points on the Olympic peninsula and destined to Missouri River and other eastern points. To reach the lines of the rail carriers, the G. N., N. P., and C. M.

& St. P. R. Rs., complainants must transport their product by boat across Puget Sound to the carriers' terminals. Carriers to apply the terminal rates desired would have to absorb the charges of the boat lines. The carriers could not in the first instance have been compelled to extend their terminal rates to the water-locked ports; but they have blanketed the entire state of Washington west of the Cascade Mountains and applied terminal rates to points within a radius of 150 miles north and south of Seattle and Tacoma. Terminal rates have been extended to water-locked ports only in two instances; to Port Blakely and Eagle Harbor by the C. M. & St. P. Ry., and to Columbia River points, such as Allenville by all three named carriers. The C. M. & St. P. Ry. also applies terminal rates from certain local points on the G. N. & N P. Rys. to local non-competitive points on its line. Before the C. M. & St. P. Ry. reached the coast the shingle mills at water-locked ports paid 12½c to 15c to boat lines to transport their product to the terminals. The C. M. & St. P. Ry. upon reaching the coast established joint rates, 5c over the terminal rates, with the boat lines from various points on the lines of the two other roads, and also from water-locked points on the peninsula. The other two lines retaliated by establishing similar joint rates. HELD, that the failure of defendants to apply terminal rates to shipments of shingles originating at water-locked points on the Olympic peninsula, while maintaining such rates from various points on the mainland north and south of their terminals, does not constitute unjust discrimination. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364.

(f) Complainant attacked the rates on news print paper in carloads from Sault Ste. Marie, Ont. (the Soo). to 45 destinations in Michigan, Ohio Pennsylvania, Indiana, Illinois and Missouri, as unreasonable and discriminatory. The Soo, on the Canadian side of the St. Marys River, which flows from Lake Superior into Lake Huron, is served by the C. P. Ry., which connects at the Soo, Mich., with the D. S. S. & A. R. R., and with the M. St. P. & S. S. M. Ry. Rates to destinations in Michigan, Pennsylvania, Ohio, and Indiana were published by the D. S. S. & A. R. R., and applied via that route and its connections from the Soo through upper Michigan, across the straits of Mackinac, and thence via the carriers in Central Freight Ass'n territory. Rates to Illinois and St. Louis applied via the D. S. S. & A. Ry. or the M. St. P. & S. S. M. and Western Trunk Line connections through upper Michigan and Wisconsin. Rates to Michigan, Ohio, and Indiana did not apply via Western Trunk lines operating through Wisconsin, nor rates to Illinois and St. Louis via the Straits of Mackinac, and Central Freight Ass'n carriers. This case arose from failure of the complainant and defendants to agree upon action to be taken in compliance with the suggestion of the Commission in Rates on News Print Paper from Sault Ste. Marie, Ont., 26 I. C. C. 13, that the Soo, Ont., Petoskey, Cheboygan, and the Soo, Mich., be grouped for rate making purposes. No print paper was manufactured at Petoskey or at the Soo, Mich., but in addition to the questions presented in the case cited, complainant prayed for the establishment of a Sault Ste. Marie-Cheboygan rate group. The principal competitors of complainant in the manufacture of news print paper were located in the Eastern District (New York, New Hampshire, Maine, Quebec and Ontario), and in the Western District (Minnesota and Wisconsin). Mills in the Eastern District were divided into four groups, and those in the Western District into three groups. In some instances mills 170 miles apart were grouped, while the Soo is but 115 miles beyond Cheboygan. In the sale of news print paper competition is keen, and the freight rate of vital importance. From 70 to 75 per cent of the paper used in Ohio, Michigan, Indiana and Illinois came from the eastern district. The daily production of news print paper in the eastern district was 3,200 tons; in the western district 500 tons, and from complainant's mill at the Soo, 200 tons. The Cheboygan mill produced 65 tons. From the Soo, Ont., to Bay City, Mich., Toledo, Ohio, South Bend, Ind., and Chicago, Ill., groups for average distances of 344, 572, 541 and 664 miles, the existing rates were 15.1, 17.7, 16.3 and 20.5 cents, yielding, respectively, 8.8, 6.2, 6.0 and 7.0 mills per ton mile, as compared with proposed rates of 12.9, 15.7, 15.1 and 16.6 cents, yielding, respectively, 7.5, 5.5, 5.6 and 5.0 mills per ton mile. Distances from the Soo to the destinations involved were in every instance much less than from any of the mills in the eastern district. To Michi-

gan and Ohio destinations distances from the Soo were less, while to Indiana and Illinois destinations they were greater than from the nearest Wisconsin group. Rates from the eastern district to Ohio destinations were uniformly less than those from the Soo, while rates to Michigan, Indiana, Illinois and Missouri points were higher than those from the Soo, though considering the difference in distance they were lower. Although the average distance from the nearest Wisconsin group to Ohio destinations was 11 miles greater than that from the Soo, the average rate was 1.7 cents less. To destinations in Michigan there was comparatively little difference in the average distance and average rate from the Soo and from the nearest Wisconsin or Fox River group. To Indiana destinations, distances and rates from the more distant Wisconsin or Wisconsin River group were about the same as from the the Soo, while distances and rates from the Fox River group were less. To Illinois destinations and the St. Louis distances and rates from both Wisconsin groups were considerably less than from the Soo. Newsprint paper is a desirable article for transportation, although the minimum weight is 36,000 lbs., the average loading approximates 50,000 lbs.; it does not require any particular equipment or special speed; claims for loss and damage are few, and the daily movement from mills is uniform. Prior to September, 1913, the rate from the Soo to Chicago, east of Lake Michigan, was 13c, but no present joint rate was published via this route. The rate west of the lake was 21½c, as published by the M., St. P. & S. S. M. Ry., and 16c via the D. S. S. & A. R. R. The following items represented additional costs to the carriers to transportation from the Soo to Central Freight Association territory above costs incurred in movements from Cheboygan: (1) switching charge of 1c from complainant's plant via the A. C. & H. B. Ry. to interchange with C. P. Ry.; (2) switching charge of $2.50 per car, minimum loading 50,000 lbs., for movement over bridge between the Soo and St. Mary's Transfer, Mich.; (3) cost of 90 miles haul, St. Mary's to St. Ignace, Mich.; (4) cost of ferrying across straits of Mackinac; (5) cost of hauling cars from Mackinaw to Cheboygan, 16 miles. The route from the Soo, Ont., to Cheboygan was over the lines of five different carriers. Shipments of news print paper from the Soo to Illinois points and St. Louis moved west of Lake Michigan via western trunk lines, while shipments from Cheboygan moved east of the lake through central freight ass'n territory and a movement from Cheboygan via the straits and the western carriers would entail much greater costs than the present movement. Rates from the Soo via lines west of Lake Michigan to Illinois and St. Louis were 6c over those from the Fox River group; for instance, from the Soo, Ont., to Chicago, Bloomington and Decatur, Ill., and St. Louis, Mo., for respective distances of 478, 610, 656 and 767 miles, the rates were 16c, 22c, 22c and 22c as compared with rates from the Fox River group to the same points, distant 234, 368, 413 and 518 miles, respectively, of 10c, 16c, 16c and 16c. The average unweighted distance from the Fox River group to typical Ohio destinations was 583 miles, and average rate 16c, yielding 5.5 mills per ton-mile. The average rate from the Berlin, N. Y., group to Ohio destinations was 15.5c; from the Grand Mere, Que., group 16.6c; from Ottawa, Ont., 16.3c, and from the Glen Falls, N. Y., group, 15.1c. The average distance from the Soo to Ohio destinations was 572 miles, and the rate 17.7c, yielding 6.2 mills per ton-mile. To most Michigan destinations rates from the Soo were the same as those from the Fox River mills. The average distance was 344 miles, and the rate 15.1c, yielding 8.9 mills per ton-mile; while the average distance from the Fox River group is 346 miles, and rate 14.7c, yielding 8.5 mills per ton-mile. To Indiana destinations the Soo was on a basis of rate equality with the Wisconsin River group. The average distance from the Soo to Indiana destinations was 541 miles, and average rate 16.3c, yielding 6.1 mills per ton-mile; while the average distance from the Wisconsin River group was 529 miles, rate 16.3c, and per ton-mile revenue 6.3 mills. Rates from the Soo and Wisconsin River mills were generally 2c higher than those from the Fox River group, from which the average distance to Indiana points was 425 miles, rate 14.3c, yielding 7.3 mills per ton-mile. Rates to Chicago from the Soo, Fox River group, Wisconsin River group, and Little Falls, Cloquet, Grand Rapids and International Falls, Minn., for distances of 475, 243, 332, 501, 531, 642 and 729 miles, respectively, were 16c, 10c, 12c, 15c, 15c, 15c and 16c. The average distance from Wisconsin River

group to Chicago was 89 miles in excess of the average distance from the Fox River group, and the rate 2c higher. The distance to Chicago from Little Falls was 258 miles in excess of the distance from the Fox River group, from Cloquet 288 miles, and from Grand Rapids 399 miles. Rates to Chicago from these three points were, however, only 5c over those from the Soo, for a distance of 232 miles greater than the average distance from the Fox River group, was 6c over the rate from that group. HELD, that the rates from the Soo to the Ohio, Pennsylvania and Michigan destinations named in the complaints were unreasonable and discriminatory to the extent that they exceeded those prevailing from the Fox River group in Wisconsin; that rates to Illinois destinations and St. Louis were unreasonable to the extent they exceeded by more than 5c, rates from the Fox River group; and that rates from the Soo to Indiana destinations were not out of harmony with those from the Wisconsin groups. Reparation denied, except as to shipments from the Soo to Chicago upon which a charge in excess of 16c was collected. Lake Superior Paper Co. v. D. S. S. & A. Ry. Co., 30 I. C. C. 403.

(g) Six miles' difference in the distance from St. Louis and Kansas City, Mo., to Leesville, La., is not sufficient to put them in separate groups. Gulf Lumber Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A447.

(h) Complainant attacked the rates on hardwood lumber from Batesville, Miss., 61 miles south of Memphis, Tenn., to Central Freight Association, Western trunk line and trunk line territories as unreasonable and discriminatory compared with rates from Sardis, 9 miles north of Batesville, to the same destinations. The rate from Sardis was 3c over the rate from Memphis, while from Batesville the rates on cottonwood and gum are the same as the Sardis rate, but 3c higher on other kinds of lumber. though the mills at these points handled the same kinds of lumber and were competitors not only in disposing of their products, but also in the employment of labor. The territory south of Memphis was divided into 50-mile rate groups, but the southern boundary of the Sardis group was run immediately south of Sardis, for the purpose of excluding any mills which might be located south of that point from the Sardis rate; as indicated by the fact that the next two groups south both took the same rate. All points on the Y. & M. V. R. R. in the same territory were accorded identical rates to destinations involved. HELD, that rates from Batesville on lumber to the named territories of destination, though not unreasonable, subject Batesville to undue prejudice to the extent that they exceed the rates from Sardis. Southern Hardwood Traffic Bureau v. I. C. R. R. Co., 31 I. C. C. 6.

(i) That a different grouping exists to nearer territory than to that more remote is not universal, but in accordance with the general practice in making group rates. Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 20.

(j) Complainant attacked the rates on grain and grain products from points in Kansas and Oklahoma to Kaufman, Tex., as unreasonable and discriminatory compared with rates to Dallas, Terrell, and other Texas points. Kaufman is 10 miles south of Terrell and 26 miles east and slightly south of Dallas. From Kansas points Dallas and Terrell were located in group 1 of the Texas grain and grain products groups; Kaufman in group 2 for grain and group 3 for grain products rates. Rates to Terrell were from 2½ to 5c lower than rates to Kaufman; to Dallas rates were same as to Terrell, save that from Oklahoma they were 3 to 3½c lower. The average distance from Kansas points to Terrell exceeded that to Kaufman by 1 per cent while Kaufman rates exceeded those of Terrell by from 7½ to 14 per cent. Rates from Kansas City to Kaufman on flour, corn and oats, and wheat were, respectively, 40½c, 30c and 33c; and to Shreveport, La., 29c, 25c and 29c. Athens and Jacksonville, 40 to 75 miles southeast of Kaufman, were in grain product group 2, thus enjoying rates 2½c under Kaufman. During the past year Kaufman had received 188 carloads of grain products and 77 of corn, but no wheat. The effect of the high rates at Kaufman was to drive farmer trade to Terrell. HELD, that the rates to Kaufman were unduly prejudicial, and should not exceed those concurrently maintained to Terrell. While carriers have the right to establish zone rates, they do so at the risk of unduly discriminating against a point just outside the zone. Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167.

(k) Complainant attacked as unjustly discriminatory the local rate of 45c a

long ton on anthracite coal from its plant near Old Forge, Pa., to Taylor. Pa., destined to points of destination on the Central R. R. of N. J. Complainant's business is to clean, sell and ship refuse, or small particles, of anthracite coal, its washery being located on the Bloomsburg Division of the D. L. & W. R. R., between the staticns of Old Forge and Taylor, 2 miles from Old Forge station and 1 mile from Taylor station. It is within the territorial limits of the borough of Old Forge but much nearer to the station at Taylor. Old Forge and Tay'or take the same rates generally. being in one rate group on inbound and outbound business. Sibley colliery, also situated in Old Forge borough but not quite as near to Taylor as complainant's washery, also takes the Taylor rate. HELD, no transportation differences exist between shipments from the Sibley washery than from complainant's, and the rates charged were unreasonable. Reparation awarded. Schrager Coal Co. v. D. L. & W. R. R. Co., 32 I. C. C. 87.

(l) Complainant attacked the rates on window glass, C. L., from Clarksburg, Salem, West Union and Weston, W. Va., to the principal markets of the East and West. The points of shipment were in the Clarksburg district, all being within a radius of 28 miles of Clarksburg on the B. & O. S. W. R. R. and all on the main line except Weston. Competing districts were designated as the Charleston district, embracing plants at Charleston, W. Va.; Kane district, embracing plants at Kane, Shingle House, Du Bois, Port Allegany, Wilcox, Brookville, Punxsutawney, Smethport and New Bethlehem, Pa.; Pittsburgh district, embracing plants at Arnold, Jeannette, Monongahela City and Belle Vernon, Pa.; Clarksburg district, embracing the plants at Clarksburg, Weston, West Union, and Salem, W. Va. The rates from the respective competing districts to typical eastern and western destination points were as follows:

	Rate Cents	Distance Miles
From Charleston District to—		
Albany, N. Y	22	801
New York, N. Y	21	653
Baltimore, Md	18	480
Richmond, Va	16	369
Chicago, Ill	18	496
Cincinnati, O	12	211
Cleveland, O	14	335
Indianapolis, Ind	14½	321
Minneapolis, Minn	36½	904
From Clarksburg District to—		
Albany, N. Y	20	654
New York, N. Y	18	506
Baltimore, Md	15	333
Richmond, Va	20	409
Chicago, Ill	20	485
Cincinnati, O	15	273
Cleveland, O	12	282
Indianapolis, Ind	19	383
Minneapolis, Minn	38½	893
From Pittsburgh District to—		
Albany, N. Y	18	532
New York, N. Y	18	448
Baltimore, Md	15	345
Richmond, Va	20	501
Chicago, Ill	18	498
Cincinnati, O	15	349
Cleveland, O	10	169
Indianapolis, Ind	17	409
Minneapolis, Minn	36½	906
From Kane District to—		
Albany, N. Y	16	372
New York, N. Y	16	382
Baltimore, Md	15	313
Richmond. Va	20	470
Chicago, Ill	21	570
Cincinnati, O	18	466
Cleveland, O	14	232
Indianapolis, Ind	20	515
Minneapolis, Minn	37	985

The rates under attack were in an incongruous state. Weston was included in the arbitrary group known as the Connellsville group when rates were made to the westward, but included in the Charleston group when rates were made eastward, which placed this point at a disadvantage generally. The Clarksburg district westbound takes the Connellsville rate, while eastbound Clarksburg is placed in the Pittsburgh group and Salem and West Union in the Parkersburg group. These groupings were entirely arbitrary and no reason was given for them. The effect of the grouping was to place Clarksburg district points at a disadvantage when compared with other competing districts. HELD, there was no justification for the rate differences between the four points included in the Clarksburg district, and so long as the group system was maintained, they should be grouped, and take the Clarksburg rate; that the Clarksburg rates to Chicago, Indianapolis and Minneapolis were unreasonable and unjustly discriminatory and should not exceed the rates from the Pittsburgh district where the distance is substantially equal; that the adjustment of rates from Clarksburg eastbound was not unreasonable. Reparation denied. Central W. Va. Glass

Mfrs'. Assn. v. B. & O. R. R. Co., 32 I. C. C. 218.

(m) Complainant attacked the rate of $1.06 on green fruit (except apples) from Provo, Utah, to Muskogee and McAlester, Okla., as unreasonable and discriminatory compared with a rate of 95c from Provo to Ft. Smith, Ark. The $1.06 rate was a blanket rate applied from Utah and Colorado common points to Texas common points and practically all of Oklahoma; the 95c rate also was blanketed to many points in Mississippi River territory. Muskogee and McAlester, while geographically intermediate, were not intermediate so far as transportation via defendants' lines was concerned, the three points being substantially equidistant from Provo. When the $1.06 rate was adopted the only line operating through Oklahoma ran north and south, but at date of hearing a number of east-and-west lines traversed the state. Rates on practically all commodities except fresh fruits from Utah to Muskogee were as low as the rates to Fort Smith. HELD, that the geographical location of Muskogee and McAlester, and the conditions surrounding traffic from Provo, entitle them to no greater rate than that maintained to Fort Smith. Reparation denied. Goodner-Malone Produce Co. v. D. & R. R. R. Co., 32 I. C. C. 414.

(n) It is seldom that ton-mile earnings alone are a decisive test of unreasonableness of group rates. 31 I. C. C., Empire Coke Co. v. B. & S. R. R. Co. 573, 578.

(o) Complainants attacked the rates on lumber from producing points in Wisconsin, Minnesota, and Michigan to the upper and lower Missouri River crossings as unreasonable and discriminatory. Through rates from the producing points were made by adding arbitraries to the "stem-rate" of 18c per 100 lbs. from St. Paul and Minneapolis, Minn., (the twin cities) to the crossings. When the stem rate was established the river crossings drew practically all their lumber from the three named states, but the lower cost of southern stumpage and the cheaper labor of the south had practically eliminated the northern traffic. The following table gives transportation costs from representative producing points in the two territories:

To Omaha to	Short Line Distance Miles	Rate per 100 lbs Cents	Per ton Mile Mills	Per Car 45000 lbs.	Per Car Mile Cents
Eau Claire, Wis.	453	21½	9.49	96.75	21.35
Bemidji, Minn.	565	25	8.84	112,50	19.91
Crosett, Ark.	816	25	6.12	112.50	13.78
Shreveport, La.	755	25	6.62	112.50	14.90
Tuscaloosa, Ala	956	25	5.23	112.50	11.76

From this it appeared that northern white pine enjoyed a marked advantage over its southern competitor; in addition to which it was lighter by from 400 to 1500 lbs. per 1000 feet. The average ton-mile earnings on lumber in carloads hauled by six lines serving the producing points and the Missouri River territory was 5.05 mills, the average haul 276 miles. The average to Omaha from 27 Minnesota points was 8.8 mills for 565 miles, from 56 Wisconsin points, 7.1 mills for 619 miles; and 6.9 mills from the Minnesota points and 6.2 mills from the Wisconsin points for distances of 717 and 705 miles, respectively. But the 18c stem-rate applied to a blanket stretching from Sioux City, Iowa, to Jefferson City, Mo., and Omaha lay well to the north of its middle point. HELD, that the rates attacked had not been shown unreasonable or unduly discriminatory. Comparisons with points lying on the edges of a group would not fairly represent the relations as a whole. Complaint dismissed. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C., 360.

(p) The maintenance of a blanket as to points of origin on rates to the Pacific Coast, carrries with it no necessity or obligation of blanketing the same territory of origin in establishing rates to its intermediate points. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 619.

(q) Complainant attacked the rate of 87c per ton on coal from the Sullivan-Linton group of Indiana to Chicago, Ill., as unduly discriminatory compared with the rate of 77c from the Brazil-Clinton group to Chicago. The two groups were but 12 miles and their centers but 32 miles apart. The weighted mileage from the Brazil-Clinton mines to Chicago was 215.71 miles; from the Sullivan-Linton group, 248.05 miles; a difference of out 32.34 miles. But on shipments via the

C. T. H. & S. E. Ry. because of grade conditions an engine that could handle 2200 tons from the former group, could handle but 1800 tons between the two groups. The Clinton rate yielded 4.6 mills per ton-mile and 18.4c per car mile; the Linton rate, 4.14 mills per ton-mile and 16½c per car mile. On the C. & E. I. R. R. trains of 85 cars could be run from the Clinton group, while those from the Linton group were, because of a Terre Haute city ordinance, limited to 50 cars, while the Clinton field had rapidly gained on the Linton field, in the production of coal; the opening of the southern Illinois coal field; increased production in the Bicknell, Ind., group; development of new mines of superior grade coal in the Brazil-Clinton group; and general overproduction in bituminous coal throughout the entire eastern territory had all contributed to the relative decline of the Linton output. Despite the differential in rates Linton had been able to compete so long as its coal was of superior quality to that of the Clinton group. HELD that the predicament of the Linton operators was due, not to unreasonable or discriminatory rates, but largely to a trade condition which had developed in the Clinton field. Complaint dismissed. Monon Coal Co. v. C. & E. I. R. R., 34 I. C. C., 221.

§9. Grading Rates.

(a) In fixing group rates, differences in rates based on distance should decrease as the distance to points of destination increases; and as between points embraced within the same group the percentage of distance over or under the average of the group to the point of destination should not be excessive. Coal Rates from Virginia Mines, 30 I. C. C. 635, 642.

§10. Differentials.

See Differentials.

(a) Complainant assailed the class and commodity rates from trunk line and central freight association territory to Aurora, and to Batavia, Geneva, and St. Charles, Ill., intermediate points, as unreasonable and discriminatory compared with the rates to Joliet and Peoria, Ill. First class rates from New York, N. Y., to Aurora, Joliet and Peoria were 80c, 75c and 83c for distances of 949, 924 and 1,007 miles, being respectively 107, 100 and 110 per cent of the 75c rate to Chicago, Ill., distant 914 miles from New York. Movements to points in Aurora group involved an additional carrier west of Chicago, while Joliet and Peoria were reached by carriers having a continuous line from points of origin. HELD, that each point should be given rates which bear the exact proportion to the rates to Chicago which its distance from New York bears to the distance to Chicago from New York. Defendants held to have shown existing rates to be reasonable and not unduly discriminatory. Complaint dismissed. Fox River Valley Mfrs'. Assn. v. M. C. R. R. Co., 32 I. C. C. 547.

IV. REASONABLENESS.

See Commodity Rates, §5 (i), (j); Classification, §7 (c); Reasonableness of Rates.

§10½. In General.

(a) Complainant, creamery company, attacked the rate of $6 per ton on fuel oil from the California oil field to Creamery and Gilbert Ariz., an average distance of 535 miles, as unreasonble, and the Arizona Corporation Commission attacked all rates on petroleum and its products, including crude oil, refined oil and engine distillates from California, Kansas, Oklahoma and Texas points of origin to points in Arizona, and asked a general reduction. **Rates from California Oil Field Points to Creamery, Ariz.**—The California oil field extends from Las Nietos to Bakersfield, respectively, 18 miles south and 170 miles north of Los Angeles, and embraces all points in this section from which oil is shipped under the blanket rate. Creamery is 10 miles east, and Gilbert 20 miles east of Phoenix, Ariz., and the distance from Bakersfield to Creamery is 612 miles, and from Los Nietas, 458 miles. The rate from all California oil field points to Arizona, on a basis of 34.3 tons to the car, was $6 per ton, based on the average distance of 532 miles, yielding a car-mile revenue of 38½c. A comparison of rates to other points showed: California oil field to Reno, distance 520 miles, car-mile earning 29.8c; Bakersfield, Cal., to Needles, Cal., 310 miles, car-mile earning 44c; San Francisco to Fernando, Cal., 463 miles, car-mile earning 23c; Los Angeles to Salt Lake City, 781 miles, car-mile earning 22c. Averaging the comparative constructive rates to these five points, gave a constructive rate to Creamery of $4.708. It appeared that fuel oil had practically superseded coal for power

purposes in Arizona. Also that traffic conditions to each of the points mentioned above were fairly comparable. HELD, that the rate complained of was unreasonable, and that in the future the rate from Los Nietos, a point in the oil field, to Creamery and Gilbert, should not exceed $4.75 per ton. Reparation awarded. **Rates on Petroleum and Its Products, Generally.**—Ninety-six per cent of the consumption of fuel oil in Arizona was by mines, on which the rate was $5 per ton, as compared with $3.35 on a 421-mile haul of engine coal from Gallup, N. Mex. The rate on fuel oil from Beaumont, Tex., to Phoenix, 1,350 miles, was $9.30, as against $5.20 from the same point to Des Moines, Ia., 995 miles, and $3.30 to El Paso, 919 miles. A rate of $24.40 was charged on shipments from Beaumont, Tex., and Coffeyville, Kan., to Phoenix, 1,350 and 1,501 miles, respectively, while rates of but $7.80 and $8.40 were charged on shipments from the same points to El Paso, 919 and 1,072 miles, respectively. The rate on petroleum and its products from California to Phoenix, 535 miles, was $19. HELD, that the rates to Arizona points were unreasonable, and that the rate on fuel oil from California points should be reduced from $5 to $4.75, and from Beaumont and Shreveport from $9.30 to $6.19. The rate on refined petroleum from California points to be reduced to $10 per ton, and from producing points in Kansas, Louisiana and Texas to $14.25 per ton; and on engine distillate 80 per cent of the rate on refined petroleum; such points to be blanketed to all points in the state, or the defendants might divide the state into 50-mile zones, applying the above rates to the central zone, embracing Phoenix and Gilbert, with increases and decreases east and west of the central zone of 10c per ton in case of the $4.75 and $6.19 rates, 25c on the $10 and $14.25 rates, and 20c on the rate on engine distillate. Pacific Creamery Co. v. A. T. & S. F. Ry. Co., 29 I. C. C. 405.

(b) Complainant attacked the rate of 70c per net ton on coal shipped from the Pittsburgh, Pa., coal district to the Youngstown District of eastern Ohio and western Pennsylvania, a mean average distance of 96 miles, equivalent to a weighted average distance of 87.1 miles. The Pittsburgh coal rate district extends 40 miles east and south of Pittsburgh, and the Youngstown district is within the area bounded by Lisbon, Sebring and Leavittsburg, in the Mahoning Valley, Ohio, and Shenango and New Castle, in the Shenango Valley, Pa. The annual coal-consuming capacity of the valleys is about 6,000 tons, and that of complainants about 1,764,000 tons. From coal districts No. 6 and No. 8, and the Cambridge, Hocking and Massillon districts of eastern Ohio, and the Pittsburgh district, to Youngstown district, Cleveland and Lake Erie ports, the rates ranged from 60c, for hauls of from 59 to 79 miles, 65c for from 70 to 92 miles, and 70c for 52 to 105 miles. The 70c rate applied to the following hauls to Youngstown: From the Pittsburgh district, via P. & L. E. R. R., 99.3 miles, and via the B. & O. R. R., 100.2 miles; from district No. 8, 105 miles. These are the greatest distances to which it is applicable. In 1903 the rates from Pittsburgh to the Youngstown district, the lake ports and Cleveland, were increased by 10c; that is to 70c and 83c and $1, respectively; and in 1907 the lake port rate was advanced to 78c, thus splitting the differential of 30c between the Cleveland and Youngstown rates into 8 and 22, a variation from the former split of 12 and 18. In the meantime the volume of traffic to the Youngstown district had doubled, the car loading had been increased, and a greater number of cars per train were handled. In 1904 the Pennsylvania lines hauled from the Pittsburgh district to the valleys, 1,181,623 tons, and in 1911, 1,906,896 tons of coal, of which about 26 per cent was consigned to complainants. In the latter year the P. & L. E. R. R. hauled 1,083,872 tons, 55.19 per cent of which went to complainants. The B. & O. Ry.'s tonnage to the Youngstown district from the Pittsburgh district was 189,770 tons. The car loadings of complainant's shipments had increased from 27.3 tons in 1900 to 46.3 tons in 1912. While the haul to the lake ports, averaging 168.5 miles, produced 4.6 mills per ton mile and the haul to Youngstown only 7.05 mills, the conditions were substantially dissimilar, since it moved mainly in summer, supplied lading for empty ore cars and carried coal which, moving by water to distant markets, was destined to come in competition with coal from other fields. While complainant shipped over 1,000,000 tons of coal per annum, it appeared that a reduction of the rate would affect the rates on a total of from 50,000,000 to 67,000,000 tons. HELD, that while increase

in tonnage might authorize a lowering of rates, the great prosperity of complainant was suggestive that it had not found the 70c rate burdensome, while its having remained stationary for ten years raised a presumption that it was reasonable. As it formed an integral part of a general system of coal rates, any reduction would necessitate a readjustment of the entire system. Complaint dismissed. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428.

(c) In the original report, 28 I. C. C. 76, 80, the Commission declared the scale of rates between Chicago and points in Iowa to be excessive. It was directed that the 80c scale to the Missouri River be graded back across the state down to the 37½c to 41.7c rates at the Mississippi River, and that the lower classes be included in the revision. The schedule of rates proposed by the carriers suggested many reductions of first-class rates and graded the scale down to the Mississippi; but they proposed rates on the lower classes, particularly classes 3, 4 and A, based on the Minnesota state scale of percentages which worked a material advance over existing rates. The existing scale extends 75 miles east of the Missouri, while the proposed scale brings the boundary of the first-class rate of 80c a little nearer the Missouri, but extends the fourth-class rate of 32c nearly half way across the state. HELD, that starting with the rate of 80c to the Missouri River, the 60c rate at Des Moines fixed in Greater Des Moines Committee V. C. R. I. & P. Ry., 17 I. C. C. 57, and the 52c rate at Cedar Rapids, fixed in 28 I. C. C. 76, the first-class rates should be graded down across the state to 37½c at the Mississippi; and that the rates for the other classes should be based on a scale of percentages as follows:

Class	1	2	3	4	5	A	B	C	D	E
Per cent	100	80	60	45	35	40	32½	27½	22½	20

Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co., 29 I. C. C. 539.

(d) Complainants assailed the rate of $2.05 per ton on shipments of coal from Newcomb, Tenn., in the Jellico group, to Greenville, S. C., in the Spartanburg group, as unreasonable. The Newcomb mines are in northeastern Tennessee about 30 miles north of the Coal Creek mines in group 7. The Jellico group had for a number of years taken a uniform differential of 10c over the Coal Creek rates on traffic to South Carolina, while rates from Coal Creek had sustained a fixed relation to rates from southwestern Virginia mines. Following the decisions in 18 I. C. C. 405, the carriers fixed the rate from the Virginia mines to the Spartanburg group at $2.05, raising the rate from Coal Creek to $1.95, and the rate from the Jellico group to $2.05 to preserve the relationship in rates. In Victor Mfg. Co. v. S. Ry., 21 I. C. C. 222, and 27 I. C. C. 661, rates from Coal Creek to the Spartanburg group were held unreasonable to the extent that they exceeded $1.85 per ton. HELD, that the increased rate of $2.05 from Newcomb to Greenville was unreasonable to the extent that it exceeded $1.95 per ton. Reparation awarded. Stone & Son. v. S. Ry. Co., 29 I. C. C. 699.

(e) Rates from Chicago to Missouri River made on an 80 per cent scale should be graded back across the state down to the 37½c to 41.7c rates at the Mississippi River. Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co., 28 I. C. C. 76, 80.

(f) Respondent express companies should adopt the block system of stating rates. In re Express Rates, 28 I. C. C. 132, 139.

(g) Iowa should be divided into five zones as to traffic to Utah and Colorado common points, and rates from each zone should be constructed by adding to the Missouri River rate a fifth of the total spread now existing in rates between Missouri and Mississippi rivers. Iowa State Board of Railroad Commissioners, v. A. E. R. R. Co., 28 I. C. C. 193, 200, 563, 564.

(h) The Commission having in the original report, 28 I. C. C. 193, directed that for the purpose of stating rates between interior Iowa points and Colorado and Utah common points, the state be divided into five zones, the difference between the Missouri and Mississippi rivers in the rate being distributed pro rata over three zones, complainant Iowa Board of Railroad Commissioners filed its statement of proposed zones. The opinion of the Commission stated that the first zone should begin with the Missouri River, the rates from this zone to be 20 per cent of the total difference between the rivers higher than from the Missouri River; but complainant's statement proposed that this zone begin, not at the river, but at some distance east thereof, thus extending the Missouri

River rate to a zone adjacent thereto and somewhat narrowing on the eastern border the zone to which the Mississippi River rate applied, to remove discrimination against eastern shipments. In conformity with Interior Iowa Cities Case. 28 I. C. C. 64, there would be a considerable territory directly east of the Missouri River to which the Missouri River rate on traffic between Iowa and points east would apply. By its original opinion in 28 I. C. C. 193, the Commission had also suggested a mileage scale to be applied between Iowa points and points in Nebraska and Kansas. Carriers objected to the establishment of the scale, and criticized it for not prescribing a uniform relation between the classes and because it prescribed the same rates for class 5 and class A; namely 40 per cent of first class. In the vicinity class A rates were not higher than class 5, but a composite of 40 railroad schedules showed them to be slightly higher in Western Classification Territory. Throughout the country these classes are rated at more than 40 per cent of first class; first-class commodities will not average more than 5 tons to the car, as compared with between 12 and 15 tons in case of fifth class, while first-class matter is much more valuable. Class A loads distinctly lighter than class 5. HELD, that the Missouri River rate may properly be extended to the zone east of the river; that while the proposed mileage scale should extend to all points in Nebraska, it should not apply to southern Kansas, but only to points upon the main line of the A. T. & S. F. Ry. from Kansas City, Mo., to La Junta, Colo., and in territory north; that 40 per cent of the first-class rate is enough for the movement of fifth-class merchandise, but that class A should be increased to 45 per cent, the relation of the classes thus amended to be as follows:

Class	1	2	3	4	5	A	B	C	D	E
Rate	100	84	66⅔	50	40	45	35	30	25	20

and that the following arbitraries may be added in case of a two-line haul:

Class	1	2	3	4	5	A	B	C	D	E
Rate	5	4	3	3	2½	2½	2	1½	1½	1

Where the short distance between two points is over two or more lines, while the originating line could, by its own somewhat longer route, handle the traffic, if the short line is exceeded by more than 5 per cent by the long line, the rate should be constructed by the short line adding the above arbitraries, unless the rate by the long line is lower. The carrier may meet that rate by the long line and decline to establish a joint through rate by the short line, unless the line is so circuitous as to be unreasonably long. Iowa State Board of Railroad Commissioners v. A. E. Ry. Co., 28 I. C. C. 563.

(i) Complainant attacked the 1911 rates of $1.70 and $2.02 per 100 lbs. on refrigerated carload shipments of deciduous fruit from California points to Montgomery, Ala., and Tampa, Fla., as unreasonable, discriminatory, and in violation of the fourth section. Existing rates to these destinations were $1.60 and $1.92, respectively. Through rates on deciduous fruits were made by combination of rates to the Mississippi or Ohio River crossings and certain unpublished proportionals in the southeast. Thus the present rate of $1.60 to Montgomery consisted of the western lines' blanket rate of $1.15 to Memphis, and a 45c proportional beyond; that to Tampa, of $1.15 to Memphis or New Orleans, a 47c proportional to Jacksonville, Fla., and 30c to Jacksonville. Complainant asked that the blanket rate of $1.15 be extended to Montgomery and Jacksonville. The reduction of 10c in the through rates resulted from a decrease in the blanket rate from $1.25 to $1.15. At the hearing carriers expressed a willingness to reduce the rates to Montgomery and Jacksonville to $1.31 and $1.26, respectively. In the Florida Fruit and Vegetable Case, 22 I. C. C. 11, the Commission prescribed rates of 18c and 29c on citrus fruits and vegetables, under refrigeration, respectively, moving from Tampa to Jacksonville. The sixth class distance rate is 43c and the intrastate local rate 72c. The rate to various Central Freight Ass'n and eastern points via Montgomery was less than the rate to Montgomery, owing to the competition of circuitous routes. HELD, that the 1911 rates from California to Montgomery and Tampa were not unreasonable compared with the lower blanket rate applicable to destinations north of the Ohio River. However, unless the carriers made reductions contemplated within a reasonable time, the Commission would prescribe rates. The rate from Jacksonville to Tampa was not unreasonable. The fourth section application to charge higher rates to Montgomery than to Central Freight Ass'n and Northeastern territory granted on the ground that the lower rates at the more distant points were the result of competition, and the route of the southeastern lines

through most gateways a circuitous one. Pacific Fruit Exch. v. S. P. Ry. Co., 31 I. C. C. 159.

(j) To put a place in different groups for grain and grain products is illogical and artificial. Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 170.

(k) Complainants attacked the carload rates of $2.50 per ton on lump coal and $1.70 on slack coal from Oklahoma and Western Arkansas mines to Weatherford, Tex., as unreasonable and unduly discriminatory. From Kribs, Okla., a typical point of production, to Dallas, Fort Worth, Weatherford and Austin, Tex., for distances of 207, 195, 228 and 396 miles, rates on lump coal were $1.90, $1.90, $2.50 and $2.35, yielding 9.1, 9.7, 10.9 and 5.9 mills per ton-mile, and on slack $1.25, $1.25, $1.70 and $1.75, yielding 6.0, 6.4, 7.4 and 4.4 mills per ton-mile. Transportation to Weatherford involved a two-line haul, while there were direct lines from the mines to the other carriers. The Arkansas intrastate rate on lump coal for a 230-mile haul was $2.20; the Texas rate, $1.70. Rates established by the A. T. & S. F. Ry. from Missouri mines to Oklahoma points yielded from 3.95 to 5.7 mills for distances about equal to that from Arkansas mines to Weatherford. HELD, that the rates in question were unreasonable and unduly preferential, and that rates not to exceed $2.25 on lump coal and $1.65 on slack should be established. Weatherford Cham. of Com. v. M. K. & T. Ry. Co., 31 I. C. C. 665.

(l) The Commission considered proposed class and commodity rates between Chicago, Ill., Mississippi River, Missouri River and intermediate territory, on the one hand, and Utah common points on the other. The 1911 rates, existing rates, and proposed first class rates to Utah were as follows: From Missouri River points, 205c, 190c and 200c; from Mississippi River points, 265c, 227c, and 247c and from Chicago 285c, 245c, and 265c. All proposed class rates were based on the 2c first class rate from Missouri River points, arrived at by deducting from the Chicago-Montana rate of $2.65 the 65c differential between Chicago and Missouri River points. Chicago was distant from Butte, Mont., 1,512 miles; from Salt Lake City, Utah, 1,528 miles. Between Chicago and Butte, the highest elevation was 6,400 ft., between Chicago and Salt Lake City, 10,000 ft. The proposed commodity rates to Utah also averaged lower than those to Montana for equivalent hauls. Chicago-Phoenix, Ariz., class rates average 116.45 per cent of the proposed Chicago-Utah rates, for a distance 15.3 per cent greater; and Omaha, Neb.-Elko, Nev., class rates averaged 122.6 per cent of the proposed Omaha-Utah rates for a distance 24 per cent greater. Utah class rates proposed were, on a distance basis, 102 per cent of the rates to Colorado common points, but the haul to the latter was a prairie haul. Under the changes proposed, lower class rates would bear the following percentage relations to the first class rates:

	1	2	3	4	5	A	B	C	D	E
Salt Lake City	100	85.0	75.0	65.0	50.0	55.0	40.0	35.0	25.0	21.0
Denver	100	80.0	64.3	52.5	40.9	48.7	36.5	32.2	28.7	25.2
Phoenix	100	86.8	73.2	63.2	53.2	53.2	41.6	33.2	31.6	28.4
Reno	100	86.8	73.2	63.2	53.2	53.2	41.6	33.2	31.6	28.4

HELD, that respondents had justified the proposed tariff, excepting the proposed rates on iron and steel articles and the Iowa zone rates; the holding being based on the Colorado, Arizona, and Nevada comparisons, and also on comparison of conditions affecting cost of service and competition east of Colorado common points with such conditions west. Order of Suspension vacated except as to iron and steel rates. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551.

(m) To put a locality in different groups for grain and grain products is illogical and artificial. Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 170.

(n) Rates on coal from groups 1, 2 and 3 on the L. & N. R. R. Co. to Charlotte, N. C., not found unreasonable as compared with rates from groups 7, 8 and 9 on the Southern Ry.; the former and its connections forming a circuitous route. Yarbrough & Bellinger Co. v. L. & N. R. R. Co., Unrep. Op. A-733.

(o) Rate to Mount Pleasant is higher than for the average distance to the group because Mount Pleasant is situated near the edge of the group. Not found unreasonable. Mount Pleasant Fertilizer Co.

v. L. & N. R. R. Co., Unrep. Op. A-748.

(p) Complainant attacked the rates on Concord grapes, C. L., to Sheridan, Wyo., Billings, Butte, Helena, Great Falls, Missoula, Livingston, Bozeman and Lewistown, Mont., from New York, Pennsylvania, Michigan, Iowa, Missouri and Kansas. The general basis of rates from the east to Montana was the full combination on Chicago, St. Paul or the Mississippi River. The rates east were second class, Official Classification minimum 24,000 lbs. and commodity rates west, minimum 20,000 ibs. To Billings the rates were $1.43 from Chicago, $1.41 from St. Louis, $1.13 from Omaha and St. Paul and $1.19 from Kansas City. From Chicago the rates were $1.49 to Great Falls, Lewistown and Livingston and $1.55 to Butte, Helena and Missoula. There are two producing sections in Iowa, one on the banks of the Mississippi and the other on the banks of the Missouri River. From the first St. Louis rates are applicable and from the second Omaha rates. Complainant proposed rates of $1.00 from the Missouri River and $1.14 from Chicago to all destinations named and through class rates from the east based on third instead of second class to the junction points. Taking Dunkirk, N. Y., and Billings, Mont., as illustrative points of origin and destination, complainants desired the rate reduced from $1.84 to $1,465. This rate base on Chicago, to which point the third class rate from Dunkirk was 31.5c and the second class rate 41c. The distance from Dunkirk to Billings is about 1,772 miles; and if this reduction were made, the ton-mile earnings would be reduced from about 2c to 1.65c. The Commission recently approved a general increase in eastern class rates, whereby the second and third class rates from Dunkirk to Chicago were increased from 39c and 30c to 41c and 31.5c. Prior to 1913 grapes moved at third class in C. F. A. territory. On January 1, 1913, this was cancelled, leaving the second class basis applicable. It appeared this change was made to correct discrimination against Trunk Line territory. The grapes are handled in refrigerator cars in fast trains. They move only in the fall. They cannot be sold in Montana except at very moderate prices, and the freight charges, not including icing, frequently amount to more than the invoice value of the grapes. It appeared that the loading of grapes is comparatively light; that the equipment in which they are handled is heavy, and that staple articles furnish a more desirable and remunerative traffic. Due to the growth of the grape juice industry the shipments of grapes from the east has diminished materially in recent years. HELD, since there was no showing that the rates from the east to Montana are high compared with rates to other western states, and considering the delicate nature of the Concord grape and the expensive service the rates complained of are not unreasonable. Complaint dismissed. Lindsay & Co. v. N. P. Ry. Co., 32 I. C. C., 287.

(q) To justify a blanket the length of the hauls from points within to its edge ought to bear a reasonable relation to the entire haul. Wisconsin & Arkansas Lumber Co. v. St. L. I. M. & S. Ry., 33 I. C. C., 33, 38.

§11. Of Group.

(a) Rate groups or blankets must terminate somewhere; but an abrupt break in the center of a territory 100 miles in extent, in which there are no substantial differences in natural conditions, and all of the shippers in which serve the same markets, produces an artificial relation which is indefensible. Mesilla Valley Produce Exchange, Inc., v. A. T. & S. F Ry. Co., A229.

(b) There is no single fixed point which can be designated "Chicago" for all purposes and for all carriers whose lines reach that city. The designation means, and is understood to mean, as applied to any one of the several lines, either or all of the several terminals and interchange points of that line within certain defined boundary lines of a district commonly called the Chicago switching district, which includes, roughly speaking, a territory 30 miles long and 15 miles wide. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 73.

(c) While the group or zone principle of rate-making is often of mutual advantage to shippers and carriers and will not ordinarily be disturbed where the rates are reasonable and non-discriminatory, yet the relative situation of contiguous points cannot be wholly disregarded in rate-making, without incurring the risk of creating unjust discrimination or advantage to the favored points. Carriers may lawfully make a rate applic-

able to a group of points within a defined zone and treat them all as one point for rate-basing purposes, but the proximity of points just without or beyond this zone cannot be ignored when the question of through rates to the latter points comes up for consideration. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co.. 30 I. C. C. 71, 81.

(d) Where group rates apply over large areas, it is ordinarily unfair, to consider only the points which are at one or the other extremity of the group. In a comparison of group rates the average of the distances from all points of origin in a group to all points of destination taking the same rate should be considered. Bessemer Refining Co. v. P. Co.. Unrep. Op. A457.

(e) Mere figures alone are not conclusive of unreasonableness, particularly when dealing with group rates. In such a situation the adjustment to some of the near-by boundary points may appear relatively unreasonable, but the rates to such points must be considered in their relation to the whole group. Stuarts Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 628.

(f) The size of a blanket may properly raise a question as to the propriety of its permanent maintenance. Wisconsin & Arkansas Lum. Co. v. St. L. I. M. & S. Ry., 33 I. C. C., 33, 38.

(g) A blanket rate adjustment must be gauged in the light of all the conditions and circumstances, chief of which are the average ton-mile yields and average hauls resulting from the adjustment. Wisconsin & Arkansas Lum. Co. v. St. L. I. M. & S. Ry. 33 I. C. C., 33, 39.

(h) Complainants seeking a division of blanketed territory are bound to do one of two things: either to show, each for himself, the undue discrimination he suffers and to adduce sufficient evidence to prove the disparity is not warranted under all the circumstances involved; or they are bound to show for the blanket as a whole that it is subject by reason of the blanket rate to unlawful discrimination. The blanket should not be dismembered on the ground that a point in the blanket appears prejudicially affected. Nor can relief be afforded to an individual lumber mill from alleged undue discrimination unless the competing points enjoying undue preference or advantage are shown to have no justification for their seemingly preferential treatment. Wisconsin & Ark. Lum. Co. v. St. L. I. M. & S. Ry., 33 I. C. C. 33, 43.

(i) Complainant assailed the rates on bituminous coal in carloads from San Toy and other points in the Crooksville, Ohio coal district (1) to Chicago, Ill., and points in Illinois, Indiana and Michigan, and (2) to Lake Erie ports for transshipment by the lakes, as unreasonable and discriminatory as compared with rates from points in the same and adjacent coal fields. **Rates to Points in Illinois, Indiana, and Michigan:** The Crooksville, Middle and Hocking coal districts, the two former thin-veined and the latter thick-veined, were adjacent. Their coal- competed actively in Chicago and Grand Rapids markets. Owing to the greater expense of mining thin seam coal, carriers serving the coal fields had accorded operators in the Middle district a rate 10c per ton less than that maintained from the Hocking district; but with the exception of a single carrier this advantage had been withheld from the Crooksville district. Complainants were not reached by this carrier. The average distance from the Middle district to Chicago was 401 miles, rate $1.55 per ton; from the Crooksville district 398 miles, rate (except of the Penn. system) $1.65. Under the $1.55 rate the per car earnings on coal were $68.20, as against average per car earnings of $28.13 on all traffic. Transportation conditions were practically the same from both districts. The earnings per ton-mile from San Toy to Chicago and Grand Rapids were 4.06 and 4.31 mills for hauls of 406 and 382 miles. HELD that the rates assailed were unjustly discriminatory against complainants and other operators located in the same district in favor of mines located in the Middle district. **Rates to Lake Erie Ports:** The average distance from various districts to these ports with rates per ton f. o. b. docks, were as follows:
(See Table on Page 128)

From San Toy to Sandusky 166 miles the 75c rate yielded 4.52 mills per ton mile; from Hocking district to Toledo, 193 miles, 3.88 mills; and from No. 8 district to Cleveland, 135 miles, 5.5 mills per ton-mile. The average short-line distances and rates per net ton to Sandusky, Lorain and Cleveland were as follows. From the Middle district, distance 116 miles, rate 65c; from Crooksville district, distance 176 miles, rate

FROM	To Sandusky		To Lorain		To Cleveland		
	Average distance miles	Rate	Average distance miles	Rate	Average distance miles	Rate	Grand Average distance
Middle District ____	155	$0.65	100	$0.65	114	$0.60	123
Crooksville District__	158	.75	218	.75	155	.75	173
No. 8 District _____	200	.75	154	.75	132	.75	162

75c; from No. 8 district, distance 149 miles, rate 75c; HELD that the evidence failed to show the rates complained of were unreasonable or otherwise in violation of law. San Toy Coal Co. v. A. C. & Y. Ry., 34 I. C. C., 93.

(j) Complainant, operating rice mills located on industrial tracks, attacked defendants' rule requiring that "Freight loaded by shipper and not checked by carrier must be receipted for 'shippers' load and count', " as unreasonable and unlawful within the Carmack Amendment. At each town where a mill of complainant was located defendants had team tracks and freight depots at which bills of lading were issued without the objectionable notation. For defendants to have sent men to check all carload freight loaded at the 233 industries connected with their lines by private tracks would have meant an annual outlay of $135,000. Claims filed by shippers in connection with shipments made subject to shipper's load and count were as carefully invetsigated as where unqualified receipts were issued. HELD (1) that the rule attacked was not unlawful since it did not operate to limit liability of carrier for full value of property shipped; (2) since the rule resulted from a situation involving the mutual interest and convenience of shipper and carrier, it could not be pronounced unreasonable. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C. C. 511.

(k) Generally speaking, where the difference in distances between points in any group is a great percentage of the average distance from points in the group to destination, the grouping is prima facie unreasonable. Oklahoma Cottonseed Crusners Assn. v. M. K. & T. Ry., 35 I. C. C. 94, 107.

§12. Of Individual Rate.

(a) While a commodity rate in excess of the class rate is regarded as unusual, special circumstances and conditions may justify such a departure from the general rule. This is especially true in the case of a commodity rate which applies from or to a numbef of points that are grouped or blanketed. It might exceed the class rate from one or more points in the blanket and still be reasonable. Rice Rates from Helena, Ark., 31 I. C. C. 614, 615.

(b) In passing upon the reasonableness of a blanket rate, the rate from or to the nearer point must be offset against the rate from or to the more distant point. Murphey Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-631.

(c) Commodity rate might exceed class rate from one or more points within the blanket and still be reasonable. Rice Rates from Helena, Ark., 31 I. C. C. 614, 615.

(d) A mileage scale cannot be applied to a blanket area, where some lines enter the blanket by reasonably direct and others by circuitous routes, so that points only a few miles apart in the heart of the blanket would under such mileage have widely different rates to the same gateway. Wisconsin & Arkansas Lum. Co. v. St. L. I. M. & S. Ry. 33 I. C. C., 33, 35.

(e) Complainants attacked the existing rates of $1.62½ on grapefruit, $4.60 on fresh tomatoes in carloads and $1.76 on oranges in carloads and grapefruit and oranges in mixed carloads, shipped from Jacksonville and other Florida basing points, when from beyond to Montana common points. as unreasonable, and attacked the minimum on grapefruit and oranges in straight or mixed carloads. The rate of $1.62½ to Billings, Mont., yielded 14.48 mills per ton-mile and 18.8c per car-mile for 2244 miles; as compared with a rate of 82½c to St. Paul, Minn., yielding 11.03 mills per ton-mile and 13.2c per car-mile for 1496 miles. The rate of $1.60 to Billings yielded 14.26 mills per ton-mile; as compared with a rate of 82c to St. Paul, yielding 10.96 mills per ton-mile. The maximum weight on citrus fruits from Florida points to most points in the

United States was 24,000 lbs. HELD, (1) that the rates of $1.62½ on grapefruit in carloads and $1.60 on fresh tomatoes in carloads was not unreasonable; (2) that the rate of $1.76 on oranges in carloads and grapefruit and oranges in mixed carloads was unreasonable to the extent it exceeded $1.62½; and (3) that the minimum weight of 26,000 lbs. was unreasonable to the extent that it exceeded 24,000 lbs. Lindsay & Co. v. N. P. Ry., 33 I C. C. 150.

V. DISCRIMINATION.

See Discrimination.

§13. In General.

(a) Complainant attacked the imposition of 117 per cent of the New York-Chicago rate on traffic from the East to Springfield, Ill., as discriminatory compared with a charge of but 110 per cent on like traffic to Peoria, Ill., and insisted that Springfield be placed in the Peoria group. The rates to Springfield were approximately 6 per cent higher than those to Peoria. While rates from the East to Springfield are higher than those to Peoria, those to the West were usually the same, with the exception of agricultural machinery and some other manufactured articles. In working out the distance scale west of the Illinois-Indiana line, it was not applied with the same minuteness as east of the line; Peoria, distant from New York 110 per cent of the distance from New York to Chicago, took the 110 per cent rate, together with the zone east thereof to the state line, while Springfield was placed in the 117 per cent group based on St. Louis, though 60 miles east of that point. The short-line distances from New York to Springfield and Peoria are nearly the same; but the lines reaching Peoria are the stronger. While Peoria possessed single-line hauls from the Atlantic seaboard, Springfield double-hauls only, but in applying the distance scale, it has never been the custom to inquire whether the short line was made up of one or two independent roads. These cities are but 60 miles apart. Peoria has a population of 75,000; Springfield, 55,000. HELD, that if the rate to Peoria is retained at 110 per cent, the rate to Springfield should not exceed 113 per cent. Springfield Commercial Association, 28 I. C. C. 511.

(b) Complainant attacked the rate of $2.30 per gross ton on scrap iron from New England points to Perth Amboy, N. J., yielding a ton-mile revenue of 8 mills, for an average distance of 287.2 miles, and the rates of $2.30 per ton on steel billets and 13½c and 16c per 100 lbs. on bar steel, when shipped in the opposite direction, as unreasonable and discriminatory compared with identical rates accorded competitive points in eastern Pennsylvania, yielding a ton-mile revenue of 5.6 mills, for an average distance of 412.2 miles. For the purpose of rate-making on these commodities, the territory in controversy was divided into four groups, namely: western, central and eastern Pennsylvania, and the New England group. Perth Amboy was included in the eastern Pennsylvania group. It appeared that the carriers, after settling upon through rates to be applied between groups, had arranged to divide earnings so that each should receive the same rate per ton mile. Complainant contended that because of the rate adjustment it was operating its plant without profit; and also, was compelled to seek raw material at sources of supply near the plants of its competitors, making the cost of manufacture higher. HELD, that agreement of carriers as to divisions could not be considered forceful evidence of an unreasonable rate, and that complainant was not entitled to an establishment of lower rates merely because it was not in a prosperous condition or because the cost of assembling its raw material was greater than that of its competitors, and that no discrimination existed. Complaint dismissed. Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500.

(c) It is evident that every system of rate groups must occasion more or less discrimination. The rate to the nearer edge of the group as compared with the more distant edge is of necessity discriminatory. This discrimination grows relatively more in proportion as the distance from the group decreases, and there must come a point when the place of origin is so near the group that the discrimination will become undue. Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 170.

(d) Complainants attacked the rates on salt in carloads from the Michigan and Ohio fields to points in Illinois, Iowa, Missouri, Kansas, Arkansas, Oklahoma, Nebraska, Colorado, Wyoming, Montana, North Dakota, South Dakota, and Minnesota as discriminatory compared with

rates from Chicago, Ill., and Milwaukee, Wis. **Salt Rates to Points West.** Following the decision of the Commission in Colonial Salt Co. v. M. I. & I. Line, 23 I. C. C. 358, rates from Chicago and Milwaukee to destinations in question were reduced 1 2-3c to Illinois points and 1½c to points west of the Mississippi, resulting in many instances in rates 4c and 5c under those from the Michigan and Ohio salt fields. In 1909 rates from Chicago, Ill., Detroit, Mich., and Akron, Ohio, were to Springfield, Ill., 8c, 10½c and 11½c; to Cedar Rapids, Iowa, 14 2-3c, 17c and 18c; to Fort Worth, Tex., 32c, 31 2-3c and 35 1-3c; and to Mankato, Minn., 14 2-3c, 17c and 18c; while in 1914 rates were from the same points to Springfield, 6½c, 10½c and 11½c; to Cedar Rapids, 13c, 17 and 18c; to Fort Worth, 32c, 33 1-3c and 34 1-3c; and to Mankato, 13c, 17c and 18c. The rate via the Wabash R. R. from Detroit to St. Louis was 11½c, yielding 4.71 mills per ton-mile for 488 miles, as compared with a rate of 7½c from Chicago to St. Louis yielding 5.17c per ton-mile for 290 miles. The average distance from Michigan producing points to Illinois destinations over distances from Chicago was 248 via lake-and-rail and 266 miles all-rail. The rate from Chicago to nearby points ranged as high as 1c per ton-mile, which return decreased with distance to 5.17 mills at E. St. Louis. The Michigan and Ohio rates yielded on an average below 5 mills. West of the Mississippi River the spread of 4c did not always obtain; on traffic to Oklahoma points the Michigan and Ohio differentials being but 2 1-3c and 3 1-3c; to Texas points 1 1-3c and 2 1-3c; to St. Paul and Minneapolis, Minn., 2½c and 3½c; and from Michigan to Colorado common points, 2 1-3c. In other words, the carriers had reduced the differential between the rates from Chicago and Milwaukee and those from Michigan and Ohio points, on traffic to points west of the Mississippi River, where the movement was not great, and increased it on traffic to Illinois points, where the movement was heaviest. HELD, (1) that existing rates for transportation of salt from the Michigan field to destination in the western states in question were unduly prejudicial as compared with salt rates from Chicago and Milwaukee to such destinations, (2) that rates from the Michigan field to Illinois points should not exceed by more than 2½c the rates from Chicago and Chicago rate points to the same destinations, (3) that no change should be made in the existing relationship in rates as between Michigan and Ohio fields. Reparation denied. **Salt Rates to Points South.**—Complainant also attacked reductions of 1½c and 3½c, made by defendants in the rates on salt from Chicago and Waukegan, Ill., to Cincinnati, Ohio, Louisville, Ky., and Jeffersonville and Evansville, Ind., as unduly preferential compared with rates from the Michigan and Ohio salt fields. Local rates from Detroit, Akron and Chicago to Cincinnati were, respectively, 9c, 8c and 7½c for distances of 263, 246 and 285 miles; to Louisville, 10c, 10c and 8½c for 353, 360 and 306 miles; to Jeffersonville, 10c, 10c and 7½c for 349, 356 and 302 miles, and to Evansville, 11½c, 11½c and 7½c for distances of 452, 483 and 287 miles. The New York-Chicago basing rate on salt was 80 per cent of 6th class. The sixth class rates from Chicago, Detroit and Akron to Louisville and Jeffersonville were the same, but the rate on salt from Chicago was 1½c less, being 65 per cent of the sixth class rate as compared with 80 per cent in the rates from Detroit and Akron. HELD, that a readjustment should be made which would place the salt rates from Chicago, Detroit and Akron to the Ohio River crossings on a more equitable basis. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559.

(e) To justify the Commission in ordering a general readjustment in a scale of rates, or a group of rates, it should be shown not only that the conditions of transportation are the same from (or to) the given point as from (or to) the points with which comparison is made, but it must also be shown that the adjustment complained of results in undue prejudice and disadvantage to the community making complaint. Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co., 32 I. C. C. 203, 205.

(f) Some discrimination is necessarily incident to any group system of rate making. In any group, and especially in one covering a large territory, the distances vary greatly, and there is corresponding variation in per ton-mile earnings. Under these circumstances a comparison of ton-mile earnings is not controlling. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C. 247, 252.

(g) That equality of rates for all

mills within a certain zone is accomplished by free back hauls longer in some cases than in others does not warrant conclusion that mills so located as to require little or no back haul are unduly prejudiced or should be given further back-haul rights. 31 I. C. C. Stock & Sons v. L. S. & M. S. Ry. Co., 150, 153.

(h) Voluntary blanket rates to non-competitive points compared with competitive rates to Cincinnati. Rates on Sugar, 31 I. C. C. 495, 501.

(i) No unlawful discrimination or preference can be predicated upon the fact that sash and door rates must be paid upon the outbound movement from the nearer of two points in a blanket of destination to the further point, which results in making the aggregate transportation costs of the combined inbound and outbound movements greater than on the through movement of lumber or sash and doors. To sustain such a contention would in effect nullify the well-settled principle that under proper circumstances points may be grouped under the same rate and would make it possible for any manufacturer located within a blanketed area to predicate unlawful discrimination upon a comparison of his inbound and outbound rates with the inbound rate to a more distant point within the same blanket. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 337.

(j) It has long been recognized by the Commission that carriers making a blanket adjustment may not serve thereunder particular points to the unlawful disadvantage of such points. Wisconsin & Ark. Lum. Co. v. St. L. I. M. & S. Ry. 33 I. C. C., 33, 43.

(k) Complainant attacked the rates via the O. S. L. R. R. and U. P. R. R. on bituminous coal in carloads from Kemmerer and Rock Springs, Wyo., and mines grouped therewith, to points in southern Idaho, as unreasonable per se and as compared with rates to more distant points. Rock Springs was 85 miles east of Kemmerer. To points west of Georgetown, Idaho, 87 miles west of Kemmerer, the same rates applied from all points of origin. To main-line points rates were graded from $1.75 per net ton to Georgetown to $3.25 to Shoshone, 282 miles west of Kemmerer; thence to Weiser, 478 miles west, the rate was $3.50. The average ton-mile revenue on coal, for distances of from 58 to 563 miles was 8.74 mills; that on all freight handled by the O. S. L. R. R., 9.44 mills. The rate from defined points of origin to Portland, Ore., $4.25, for a haul of 947 miles, and that of $2.75 from the same points to Butte, Silver Bow, and Anaconda, Mont., average distance 484 miles, resulted from competitive conditions. HELD, that the existing rates had not been shown to be unjust or unreasonable, either in themselves or relatively. Complaint dismissed. Public Utilities Commission of Idaho v. O. S. L. R. R. 33 I. C. C., 103.

(l) Some discrimination is necessarily incident to any group system of rate making. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co. 32 I. C. C., 247, 252.

(m) Complainant attacked the system of grouping all the mines in the Gogebic and Menominee ranges and applying to all the blanket rate of 45c as discriminatory. The boat rate from Ashland was 15c per ton greater than that from Escanaba, while facilities for handling ore were better at Ashland. HELD that it had not been shown that the discrimination was unlawful. Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C., 645, 647.

(n) Complainant attacked the rates on cottonseed oil from producing points in Oklahoma to Kansas City, Mo. and the rates on cottonseed cake, meal and hulls from the same producing points to destinations in Kansas, Missouri, Colorado, Nebraska, Iowa and other states, as unreasonable and discriminatory in favor of competing points in Arkansas. The rate from the Oklahoma blanket to Kansas City was on cottonseed oil, 25c; on cottonseed cake, meal, and hulls 17c; for distance ranging from 257 to 508 miles. The center of production in the Oklahoma blanket was only 343 miles from Kansas City. Cottonseed oil moved in tank cars averaging 55,000 lbs., earning $137.50 per car and 40c per car-mile for 343 miles. The rates on wheat from Tulsa, Oklahoma City, and Hugo, to Kansas City for respective distances of 257, 343, and 477 miles, were 15, 20 and 22 1-2c, loading to visible capacity. The blanket rate on cottonseed oil from Oklahoma to Chicago was 35c for an average haul of 843 miles. The 17c rate to Kansas City on cottonseed cake, meal and hulls had continued in force while the average haul was reduced from 499 to 343 miles. Southbound rates from

Kansas City to Tulsa. Oklahoma City, and Hugo were only 12, 17 and 21c. Rates from Arkansas producing points to Kansas City, average haul 478 miles, were: on cottonseed oil 21c, and on cottonseed cake, meal and hulls 17c. Kansas destinations, to which the Kansas City rate of 17c on cottonseed cake, meal and hulls applied, were nearer Oklahoma points of origin than was Kansas City; while the reverse was true on shipments from Arkansas. HELD, that the existing grouping of points in Oklahoma, producing cottonseed oil, cake, meal, and hulls, was unjust and unreasonable, and the existing blanket rates unreasonable and prejudicial. A distance tariff applicable from all points in the blanket suggested as a solution of the difficulty. Oklahoma Cottonseed Crushers' Assn. v. M. K. & T. Ry., 35 I. C. C. 94

VI. REMEDY FOR UNLAWFUL GROUPING.

§14. In General.

(a) Well established rate groups should not be lightly disturbed. Southern Hardwood Traffic Bureau v. I. C. R. R. Co., 31 I. C. C. 6, 8.

(b) General rule that well-established rate groups ought not to be lightly disturbed cannot have any application in this case. Southern Hardwood Traffic Bureau v. I. C. R. R. Co., 31 I. C. C. 6, 8.

(c) Sharp competition between complaining points and St. Louis while competing only to a small extent with upper crossings, a strong reason for not approving change in grouping. Class and Commodity Rates to and from Quincy, Ill., 32 I. C. C., 471, 476, 478.

§15. Scope of Complaint.

(a) If individual complainants are subjected to unjust discriminatory rates, under an existing blanket adjustment, they should indicate the specific untoward circumstances in which they are severally placed. And where they choose to unite in the allegation of a common grievance, on the record the matter must depend largely upon the validity of that common grievance. Wisconsin & Arkansas Lumber Co. v. St. L. I. M. & S. Ry., 33 I. C. C., 33, 35.

VII. EVIDENCE.

See Evidence.

§15½. In General.

(a) It is seldom that ton-mile earnings alone are a decisive test of the unreasonableness of a rate; and this is especially true in the case of group rates. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 578.

§17. Extent of Zone.

(a) Rate per ton-mile to Mount Pleasant is higher than for the average distance to the group because Mount Pleasant is located near the edge of the group. Rate not found unreasonable. Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co., Unrep. Op. A-748.

(b) In testing the reasonableness of rates from producing points to a blanket territory of destination, consisting of arbitraries to a common point and a "stem rate" beyond, the fact that the producing points are also served by carriers whose hauls are longer than the short-line distances and whose lines do not pass through the common point upon which the rates are based, is entitled to consideration. Northern Pine Mfrs. Ass. v. C. & N. W. Ry., 33 I. C. C., 360, 369.

§18. Comparisons.

See Comparative Rates.

(a) Distance to point upon edge of territorial group may be found which would not be fairly comparable with average distance from entire group from which rate applied. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 195.

(b) If particular lumber mills are unduly prejudiced when their rates are compared with those of adjoining mills outside the blanket, that specific situation should be developed upon the record. Where complainants attack the rates in the entire territory, they do not successfully establish the unreasonableness or undue prejudice alleged by pointing out contrasts between individual points, one on each side of the blanket boundary. Such extremes do not suffice of themselves to discredit the blanket adjustment, specially in the absence of proof that actual movement takes place over the route cited. Wisconsin & Arkansas Lum. Co. v. St. L. I. M. & S. Ry., 33 I. C. C., 33, 39.

(c) A proper comparison cannot, of course, be made with distances running to or from a blanket unless a mean point of the blanket is taken as the standard

of measure. This is obvious because a group adjustment necessarily implies disregard of distance, and comparisons with points lying on the edges of the group would not fairly represent the relation as a whole. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 369.

(d) California grape rates can not be used as a measure of reasonableness in passing upon rates from east to Montana. Lindsay & Co. v. N. P. Ry. Co., 32, I. C. C., 287, 289.

§19. Competition.

See Competition.

(a) Owing to competition at the western terminal the rates are blanketed for long distances, while eastbound they increase with the distance. Pacific Coast Gypsum Co. v. O. W. R. R. & N. Co., 30 I. C. C. 135, 138.

VIII. REGROUPING.

§20. In General.

(a) The Commission investigated a proposed increase in the rate on cement from Mitchell, Ind., to New Orleans from 12.5c to 14.5c. Mitchell in 1913 was placed in what is known as the Indianapolis group, taking the 14.5c rate, but in 1914 was placed in the Vincennes group which took the 12.5c rate. It was contended this change was made through error, and the carriers sought to rectify it by a supplement restoring the original grouping. The transfer of Mitchell from the Indianapolis group to the Vincennes group was under consideration by the carriers for a long time. The southern lines consented to the change, provided they were granted relief from the fourth section. The I. C. R. R. did not consent. Temporary relief was granted as to rates on cement from Mitchell to Memphis and New Orleans and points taking the same rates. Those southern lines which had conditionally consented to place Mitchell on the Vincennes basis did not regard the granting of temporary relief as a fulfillment of the condition upon which they had consented to the transfer of Mitchell to the Vincennes group, and did not authorize their agent to make the change. The tariff making the change, however, was issued by the agent. HELD, while the Commission granted permission to the carriers temporarily to maintain rates without observing the long and short rule, it cannot require them to establish or maintain rates that contravene that rule. Advance allowed. Cement Rates from Mitchell, Ind., 32 I. C. C. 93.

(b) Coal operators of Illinois sought to bring about a regrouping of the coal mines in that state for rate-making purposes, the particular destinations being points in Iowa, Minnesota and western Wisconsin, and the reasonableness of proposed increased rates from certain coal mines in Illinois to St. Louis. The coal-producing area of Illinois covers nearly three-fourths of the entire state; at the time the record was closed there were apparently 380 mines that may be considered as shipping mines, of which 45 were in northern Illinois, 89 in the Springfield district, and 77 in southern Illinois. These mines are divided into a number of rate groups. On coal destined to points in the Northwest, the northern Illinois mines, comprising the Third Vein, Wilmington, Fulton and Peoria fields, with certain exceptions, all take the northern Illinois or Chicago group rate. This is the controlling rate to the northwestern destinations above mentioned, and other groups in Illinois and Indiana take differentials over it as follows:

Groups.	Differential per ton over northern Illinois. Cents.
Springfield	40
Danville	57
Belleville	60
Centralia	60
Brazil-Clinton, Ind.	60
Southern Illinois	70
Sullivan-Linton, Ind.	70
Princeton, Ind.	77
Booneville, Ind.	80

The largest group is what is known as the Springfield group and the operators in the northern part desired to divide, so that on north-bound traffic the mines north of the Christian-Montgomery County line extended should have a differential of 15 cents per ton under the rates from the mines in the group south of that line. The groups north of this line on south-bound coal appeared to be radically different from the groups on north-bound shipments. On south-bound shipments there is no Springfield group. In considering the case the Commission referred to the two

groups of operators in the Springfield district as Springfield north and Springfield south, according to their location with reference to the line referred to. The same general territory, however, is broken up into a number of groups, and from mines in these groups, north of the line of division of the Springfield group proposed by the complainants, the differentials on coal destined to East St. Louis and St. Louis range from 3c to 18c a ton over the rates from mines south of that line and in the so-called inner group, hereinafter mentioned. North of the Springfield group are the Wilmington, Third Vein, Fulton and Peoria mines, comprising the so-called northern Illinois coal field; south of the Springfield group is the southern Illinois field, including mines located in Williamson, Jackson, Franklin, Perry and Saline counties. Between the northern and southern groups lie the Springfield, Centralia, Danville and Belleville fields. The cases really involved the establishment of reasonable rates to St. Louis or the rates to St. Louis be the same as those charged to East St. Louis. **Auburn & Alton Case.**—Prior to 1887 the Illinois mines were not grouped into rate districts. The Third Vein field had a direct outlet into interstate territory over the Illinois Central, the Rock Island, and the Chicago & Northwestern; the Wilmington coals moved through Chicago. The carriers were agreed that the Wilmington, Third Vein and Fulton County fields, then producing annually 3,300,000 tons, in the aggregate, or one-third of the total production of the state, should take the Chicago rate; but the differentials to be paid by the other mining districts, being in dispute, were submitted in 1887 to Mr. J. N. Faithorn, then chairman of the freight bureau of the railroads. The Springfield district at that time comprised mines in the immediate vicinity of that city and at other points north of the line by which it is proposed to divide the present Springfield group; the annual output was about 1,750,000 tons. Peoria had not yet become a gateway for the coal traffic and a large part of the movement was through Chicago. South of the Springfield district, as then established, were mines located on the Wabash at Mount Olive, Staunton and Worden, in the vicinity of St. Louis, producing about 1,000,000 tons annually. The differential of the Bloomington field, lying to the northeast of Springfield and now a part of the Springfield group, was fixed by Mr. Faithorn at 20c above the northern Illinois rate; the Springfield differential was placed at 50c above northern Illinois and that of the more southerly mines, just mentioned, at 20c above the Springfield group rate, or 70c above the northern Illinois rate. This adjustment was known as the Faithorn award. Before it became effective, however, the carriers unanimously agreed that the differential of Springfield over the northern Illinois should be but 40c. The differential of 70c fixed for the more southerly mines was not long maintained, because the Wabash interests organized or acquired a coal company having mines south of the original limits of the Springfield group, to which was soon applied the same rate as was given Decatur, 75 miles nearer Chicago, or the Springfield rate. This resulted in extending the so-called Springfield group rate as far south as Glen Carbon on the Illinois Central and Edwardsville on the Wabash, distant, respectively, but 21 miles and 17 miles from St. Louis. The Perry and Williamson County districts, the former known as the Duquoin field, lying just south of the new Springfield group, at that time made up the southern Illinois field, which was producing annually about 1,000,000 tons. As most of its output then moved to points south of the Ohio River, no northbound differential was fixed from those mines. Nor were any differentials then fixed from the Belleville or Centralia groups, at that time producing annually about 1,500,000 and 100,000 tons, respectively; the Belleville coal was then, as now, largely consumed in St. Louis, and Centralia coal did not move to the north or northwest. Later the Belleville differential on northbound coal was fixed at 20c over Springfield or 60c over northern Illinois; and when Duquoin later found it could market its coals to the north, the 70c differential originally fixed by Mr. Faithorn for Mount Olive, Staunton and Worden was extended to that field also. With the development of the Harrisburg district in Saline County in 1905 and Williamson and Franklin counties still later, the 70c differential was made applicable to those mines also. In this manner the various coal fields of Illinois were gradually extended and the differentials established on their present basis. It appeared that the differentials were not

based on transportation conditions and were established without reference to transportation costs as between the several fields but to meet commercial conditions and to put all these coals on a reasonably equal competitive basis. So carefully, in fact, have the quality of coal, thickness of seam, wage scale, cost of mining, competition of other fields, etc., been taken into consideration in working out the present relationships between these fields that the statement was made on the argument that the consumers of the various coals in the Northwest pay practically the same price regardless of mines from which they are shipped. The mining wage scales in the several fields take into consideration the existing freight differentials and the relative advantages and disadvantages of location of the mines. Most of the consuming territory involved was within 300 miles of La Salle, in the Third Vein field, and the average rate from those mines is about $1.50 per ton. For an additional haul of almost 300 miles southern Illinois coals take rates 70c higher than those from the northern fields. Taking Livermore, in the state of Iowa, as a typical point of destination, the short-line average distance from the several fields, the present rates, and earnings per ton-mile thereunder are shown on the following table:

From	Miles.	Rate.	Ton-mile earnings. Mills.
Third Vein	306	$1.85	6.05
Fulton County	318	1.85	5.82
Wilmington	372	1.85	4.97
Springfield, north	390	2.25	5.77
Springfield, south	458	2.25	4.91
Danville	444	2.42	5.45
Centralia	490	2.45	5.00
Belleville	529	2.45	4.63
Southern Illinois	553	2.55	4.61

It appeared that what the northern Illinois and the operators in Springfield north wanted was not so much a reduction in the amount of their rates as an increase in the rates from the southern Illinois field. Most of the coal northbound, with the exception of that originating in the northern Illinois field, moves through Peoria, which has been selected as the basing point in constructing the average mileages used throughout the complainant's showing in this case. The average of all routes capable of serving all mines has been taken, and the exhibits show the minimum, maximum and average haul by every route and the average over all routes; they also show the short-line average hauls. The average distance from the Third Vein filed to Davenport, Iowa, an important river crossing, is stated at 79 miles. The Rock Island line, which passes through this field, extends also from Peoria to Davenport, a distance of 94 miles. To this latter distance the complainants add the average mileage from the several groups to Peoria. The distances to Davenport thus obtained are as follows:

	Miles.
Third Vein	79
Springfield, north	173
Springfield, south	250
Belleville and Centralia	288
Southern Illinois	365

It will be seen that the average distance to Davenport from mines in the proposed Springfield north group is 77 miles less than from the mines in Springfield south. Eliminating the mines in the extreme northern part of the group, which ship practically no coal into the territory involved, the difference in the average distances between Springfield north and Springfield south is 73 miles. And the Commission was asked to consider whether the extension of the Springfield group rate to mines which are between 70 and 80 miles more distant from common markets of consumption than those in Springfield north results in undue preferences and unjust discrimination. The gravamen of the complaint is that the southern Illinois mines, although nearly 300 miles more distant from the common markets of consumption than those of northern Illinois, and 200 miles more distant than the mines of Springfield north, pay rates that are only 70c and 40c, respectively, higher than the rates of those two sections. And even these differentials cannot be maintained at points within 50 miles west of the Mississippi River, because the interstate rates to such points are controlled by the local rates of Illinois and Iowa. The rates promulgated by the Illinois Commission are made to favor the long haul; the maximum rate for a haul of 100 miles is 90 cents; for 200 miles, $1.11; and for 300 miles and 400 miles it is $1.26 and $1.39, respectively. It will be noted that but 28 cents per ton is allowed under these rates for a haul of between 200 and 400 miles. The rate

from northern Illinois to Rock Island is 80 cents; to construct the rate to Davenport, just across the river, in the state of Iowa, 5 cents is added to rate to Rock Island. The Chicago, Burlington & Quincy is the short line from southern Illinois to Rock Island and it charges the maximum rate to that station of $1.25; the rate to Davenport is, therefore, $1.30 a net ton. The differential at Rock Island and Davenport, between the northern and southern fields, is therefore reduced from 70 cents to 45 cents, and at Dubuque, to the north of Davenport, to 40c. A like situation is presented at all the river crossings, and as coal may be reconsigned to points in the state of Iowa on the distance tariff rates of that state, the result is practically to exclude the northern Illinois operators from the markets near the river. The northern Illinois coal, however, reconsigned at the crossings to points beyond, takes rates beyond the river somewhat lower than the Iowa scale, while the coals of Springfield and southern Illinois pay the Iowa rates from the crossings. The result of this arrangement is that the 70c differential is re-established at about 50 miles west of the river, beyond which point the two state distance tariffs are practically disregarded in the making of interstate rates. The rate to Cedar Rapids from La Salle, in northern Illinois, 155 miles, and from Peoria, 170 miles, is $1.50; from southern Illinois the rate is $2.20. The latter coal moves through Peoria and the rate is so divided that the carriers south of that junction receive but 70c for a haul of 277 miles, while the lines north, for a haul of but 170 miles, receive $1.50. So fierce, however, has been the competition among the coal operators and the carriers serving their mines that these Illinois coal rates, generally regarded as low, have been forced down to a level equal in some instances to but one-half the amount that could be charged under the distance tariff of that state. To Peoria, for instance, rates of 86c, $1.02, and $1.22 are permitted from Springfield north, Springfield south, and southern Illinois, respectively; but, instead of these amounts, the carriers actually charge and receive but 47c, 47c, and 77c for the repective hauls, with a further shrinkage of 7c in the joint through rates to northwestern destinations. It appeared that owing to the tremendously increased production of coal in southern Illinois, ranging from 10,000,000 to 15,000,000 tons in 1911 to 17,000,000 to 200,000,000 tons in 1913, the northern Illinois coal, which is more expensive to mine, is being gradually crowded off the market. HELD, the Commission has often had occasion to say that commercial advantages and disadvantages of this character are not factors that can have any great consideration in reaching conclusions as to the propriety of the rate structures under which such commodities move. It should be remembered that the general basis of this adjustment has been in effect for more than 25 years, and the enlargement of the several groups from time to time through the development of new mines and the application of the group rates to them was accepted without serious objection until some ten years prior to the filing of the complaint, when the newer development of mines began. Since that time there has been a tremendous increase in the total amount of coal mined in the state of Illinois. The operators of these new mines in Springfield north, equipped with modern machinery, are said not to have appeared in the proceeding at all, and none of the operators in Springfield south is contending for a wider differential against southern Illinois. A careful examination of the whole record has left the conviction that the real trouble in this situation is that the coal mining interests of Illinois have enlarged the physical capacity of their mines to a point where it is in excess of the demand, and that it is largely the superior quality of the southern Illinois coal, the better preparation of that coal for the market and its lower cost of production that have given it an advantage at the consuming markets and has disturbed and curtailed the market for the less satisfactory coals of the other fields. None of the mines south of the county line proposed by the complainants as the line of division for the present Springfield group is complaining of the present adjustment. The complaint comes from the older mines north of that line, and the proposed division of the Springfield group, with a differential in their favor against the mines in the southern part of that group, is the only form of relief that they suggest beyond the further contention, in which the northern field joins, that a widening of the differential against southern Illinois will also help. If this latter relief is required by the Commission, the Third Vein and Wilmington operators say that they will

be able to compose their differences, but otherwise they must fight it out. To grant the demands of the Centralia operators would mean a further extension of the present Springfield group to the southeast by 40 miles. Nothing appears on the record to show that the line of division proposed by the complainants, with all the consequences to others that hang upon it, affords a just solution of the problem. To accept the contention of the operators in Springfield north, that they are entitled to lower rates because of their proximity to common markets, would necessarily mean that the geographical relation of all the other coal operations in Illinois and Indiana to the same morkets would have to be considered also. In other words, an acceptance of that principle would require an entire regrouping of the Illinois mines, and this could be done only upon a record dealing with the situation more fundamentally than here presented. The present adverse conditions are due chiefly to an overdevelopment and overproduction of coal in Illinois and to the superior quality of the southern Illinois coal rather than to any maladjustment of the Illinois coal groups or to any maladjustment of their rates and differentials. **St. Louis Cases.**—The main issue in these cases is the alleged discriminations against the city of St. Louis (1) in that the rates on coal from the inner and outer groups of mines are higher to St. Louis than to East St. Louis; (2) that when deliveries are made on the rails of the Terminal Railroad Association in East St. Louis the line carriers, on shipments from the inner group, for example, retain but 22c out of the 32c rate, the remaining 10c being the charge of the terminal association, while for precisely the same service and to the same junction with the terminal association in East St. Louis, the line carriers, on coal delivered on the rails to the terminal association in St. Louis, retain the full East St. Louis rate of 32c; (3) that the terminal association makes an arbitrary charge of 20c per ton on shipments of coal moving from points within the so-called 100-mile zone to St. Louis while making no charge on coal originating at mines located outside that zone. The hundred-mile zone is known as the inner group and includes all of group 2, while group 10 is known as the outer group. The existing rates from groups 2 and 10 to East St. Louis were 32c and 47c, respectively. To St. Louis the rate from each group was 20c higher, being the charge of the terminal association for switching the coal from East St. Louis to St. Louis. The inner group, or group 2, covers an area of 4,600 square miles, and the mines of that group furnish about four-fifths of the coal consumed in the manufacturing districts of St. Louis and East St. Louis; the nearest mine in the group is but 8 miles from the city of East St. Louis, and the most distant mine is 72 miles from that city. The city of St. Louis has a population of about 800,000, while East St. Louis, on the opposite or east bank of the Mississippi River, has a population of about 60,000. Immediately to the north of the latter are the villages of National City, Brooklyn, Venice, Madison and Granite City, and to the south the village of Dupo, which municipalities have a combined population of 20,000. The total population of the entire locality, which the St. Louis interests assert is one commercial center is, therefore, approximately 900,000. Spanning the river, which at this point is about a mile wide, and connecting the railroad tracks on the east and west sides, respectively, are the St. Louis Merchants' bridge and the Eads bridge. The latter is used not only for railways but also for street cars, other vehicles and pedestrians. Under favorable river and weather conditions ferries operated by the Wiggins Ferry Company and the Interstate Car Transfer Company ply between the two sides. Through stock ownership the two bridge companies and the two ferry companies are owned or controlled by the Terminal Railroad Association of St. Louis, which in turn is owned by 15 of the trunk lines entering the city, hereafter referred to as proprietary lines. In addition to the facilities furnished by the terminal association, the Southern Railway Company operates the Venice and Carondelet Belt in East St. Louis, and the Iron Mountain Railway operates the Ivory Transfer ferry, crossing the river at Dupo, south of East St. Louis. The Illinois Traction System enters the city to the north over the McKinley bridge, which it owns. The tracks of the western lines having their eastern terminals at St. Louis and those of the eastern lines having their western terminals at St. Louis are all operated under a reciprocal switching arrangement which makes them available for the delivery both in St. Louis and East St. Louis of all traffic regardless of its origin. The switching district on the west side of the river covers an area of about

75 square miles; on the east side the switching district extends over 30 square miles, including 250 miles of track. Coal from Illinois mines destined to St. Louis is hauled to yards on the east side, where it is delivered to the Terminal Railroad Association; from this point the cars are handled across the river either over the bridges or in connection with the ferries of the latter association. It will be seen, therefore, that the transportation service between the two manufacturing districts is largely in the hands of the Terminal Railroad Association. The 100-mile zone did not appear to be accurately named with respect to the coal from 100 to 200 miles. The terminal association nevertheless made a charge on all traffic, whether originating at or destined to points within the 100-mile zone or beyond, but it disappeared on the long-haul traffic because the trunk line revenues were regarded by those carriers as sufficient to enable them to absorb the charge, while on traffic between St. Louis and points within the 100-mile zone the line carriers do not consider their revenues sufficient to permit the absorption of the terminal association's charge. Illinois coal moves to East St. Louis over the ordinary stretches of track involving no unusual traffic conditions, while the delivery in St. Louis, after it has reached East St. Louis, can be effected only through the performance of an additional transportation service over bridges or by means of other instrumentalities of carriage that involve not only additional expense to operate, but a very substantial additional outlay of capital. That the weighted average haul of the terminal for deliveries in the very congested St. Louis switching district is 8½ miles as compared with the weighted haul in the East St. Louis district of 3½ miles. Furthermore, there are delivery points in the St. Louis switching district that involve a haul of as much as 22 miles from the west bank of the river. Moreover, the assessed valuation for taxation for the year 1911 in Missouri and Illinois of the Eads bridge and approaches was $2,950,000. The record shows that the valuation placed upon that bridge by the Illinois State Board of Equalization for that year was equivalent to the board's valuation of 162 miles of track of the C. & E. I. R. R. Co. and equivalent to its valuation for 409 miles of track of the East St. Louis & Suburban Railway. It also shows, known also from other proceedings, that the St. Louis terminals are complicated and congested and occupy property of great value, no small part of which lies in the heart of the city; that the terminals are expensive to operate, and that while in some years there has been revenue enough to cover fixed charges, taxes, maintenance and operation, in other years there has been a deficit. HELD, that it cannot be said that because the two communities may be one from the commercial point of view they are also one community for transportation and rate-making purposes. On long-haul traffic the charges of the terminal association disappear in the through rate through the absorption of them by the line carriers as heretofore stated, their larger revenues on such traffic enabling this to be done. But we see of record no just basis for requiring the absorption by the line carriers of the charges of the terminal association on their short-haul traffic yielding much lower revenues. Whether the terminal association be considered as a separate entity or its rails simply an extension of the rails for the proprietary lines, thus making a one-line haul in some cases from these mines into St. Louis, no sufficient reasons are shown on this record for a finding that the St. Louis rate should not exceed the East St. Louis rate. A higher charge, therefore, may properly be made on coal moving from Illinois mines to St. Louis. **Advanced Rates.**—It was proposed to increase the present rates from all the 13 groups to St. Louis 5½c per ton. Taking groups 2 and 10 as typical, the proposed rates to St. Louis are 57½c and 72½c, respectively, instead of the present rates of 52c and 67c. At the same time the tariffs here under suspension were filed tariffs increasing the rates to East St. Louis 5½c were also filed; these tariffs, however, have not been put into effect in order that the fixed and customary differential of 20c between St. Louis and East St. Louis might not be disturbed. Under the local Illinois distance scale for the average haul of 22 miles from group 2 points, the carriers may charge 54c; the present rate is 32c and the proposed rate is 37½c. As will be seen from the following table, compiled from an exhibit offered by one of the respondents, these rates are less than those permitted under the tariff schedules promulgated by state authorities in the same general territory:

	Cents.		Cents.
Nebraska	51	Oklahoma	47
Arkansas	65	Missouri	50
Kansas	55	Minnesota	54

The minimum haul of the Mobile & Ohio in the inner group is 54 miles and the maximum haul 66 miles; under the Illinois scale that line could charge from 78 cents to 84 cents, respectively. In 1903 the rate to St. Louis from the inner group based on the East St. Louis combination, was 70 cents per ton, the bridge arbitrary being then 30 cents and the rate to East St. Louis 40 cents. The latter rate involved no switching charge, it being a net rate; the terminal charge of 30 cents provided for deliveries at all points within the switching district of St. Louis. On coal delivered off the line of the terminal association that company absorbed a switching charge of 10 cents per ton made by the western line. The Wabash, however, with rails both east and west of the river, decided to refund to shippers on its line the 10 cents so received by it from the terminal company; this caused a disparity of rates alleged to be "unsatisfactory to all concerned." There was thereupon published to take effect July 1, 1906, a rate, a rate from East St. Louis to St. Louis of 20 cents applicable to deliveries only on the line of the terminal association; and this rate was later extended to all deliveries in the switching district of St. Louis through the absorption by the line carriers of the 10c charge of the western lines. The basis of the 40c rate to East St. Louis was the Illinois scale for distances between 6 and 10 miles for class A roads, the minimum hauls of the lines here involved; for class B roads the charge may be 42 cents for the same haul. For several months in the winter of 1908-1909, the St. Louis rates were on the basis of 45 cents; in May, 1909, rates to East St. Louis and St. Louis of 32 cents and 52 cents, respectively, were published and remained unchanged until the rates here under suspension were filed. The following table shows the rates on coal that have been in effect since 1903.

	E. St. Louis	St. Louis
Jan. 1, 1903	30	60
Jan. 10, 1903	40	70
May 1, 1905	30	60
May 22, 1905	15	45
June 5, 1905	25	55
June 15, 1906	40	60
Apr. 3, 1907	42	62
Dec. 7, 1908	25	45
Dec. 7, 1908	25	60-65
May 1, 1909	32	52
Present	32	52
Proposed	37½	57½

An analysis of the fluctations in the rate structure is not only of interest but of importance. The successive reductions in 1904 of the East St. Louis rate, from 40 cents to 30 cents and from 30 cents to 25 cents, were brought about through the action of the Southern Railway, taken, as is explained of record, not for any transportation reason, but in order to protect the operators located on that line against what was regarded by it as unfair competition on the part of certain of the short lines referred to earlier in this report. It was alleged that, by means of interlocking interests in coal properties and short lines of railroad, the mines were being kept in operation practically at the expense of the mine-owned railroads; that is the joint interests were willing to sell their coal at approximately the cost of producton and at the same time appear to be maintaing the freight rate, while in fact they were treating the operation of the mine and the railroad as one. It was thought by the Southern Railway that, because of the shortness of the haul and the low operating costs of these roads, their operation must be extremely profitable, and these railroad coal combinations were endeavoring to "freeze out not only the standard railroads, but also the mines depending upon them." To enable the operators on the standard lines to compete in the markets of East St. Louis, and St. Louis, with these short lines of road and the mines which they served, it was necessary for the standard lines to publish the same rates as the short lines, the quality of coal on all lines being very similar. The 25-cent rate established by that line was maintained for about a year, when it was increased to 40 cents, and still later to 42 cents. For the same reasons mentioned above, the Southern Railway, in 1908, again reduced the rate to East St. Louis to 25 cents, and the other lines were forced to follow. This time, however, the low rate remained in effect for 5 months only and was, on May 1, 1909, restored to 32 cents. In now proposing to increase all rates by 5½ cents per ton the carriers say that they are endeavoring partially to restore the rate of 62 cents previously in effect. In the majority of instances the originating carriers received but 22 cents out of the 32-cent rate, for when the coal was delivered off

their own rails in East St. Louis they had to absorb the 10-cent charge of the delivering line. HELD, the proposed advances be allowed. The Illinois Coal Cases, 32 I. C. C. 659.

BRANCH LINES.

I. REASONABLENESS OF RATES.
§1. In general.
§2. Compared with main lines.
§3. As part of system.
§4. In competition with main lines.
II. DUTY TO ROUTE.
§5. In general.
III. CONTROL AND REGULATION.
§6. Jurisdiction of Commission.
IV. DUTY TO FURNISH FACILITIES.
§7. In general.

CROSS REFERENCES
See Advanced Rates, §12; Cars and Car Supply, §21½, §14 (l), (i), §17 (e), §18 (d), §18 (s); Water Carriers, §7 (a).

I. REASONABLENESS OF RATES.

§1. In General.

(a) Boat line originating traffic considered same as branch line to rail carrier. Railroad Commissioners of Florida v. A. C. L. R. R. Co., 28 I. C. C. 356, 359.

(b) Complainant protested against the through charge of $5.95 per ton, on shipment of ore of a value not greater than $9 per ton, from Eureka and Ruby Hill, Nev., 4 miles distant on a partially destroyed branch, to Midvale, Utah, as unreasonable, and prayed for the restoration of the branch line and the establishment of joint through rates. The charge included $2.35 from Eureka to Palisade, a distance of 84 miles (narrow-gauge), a 25 per cent dumping charge at Palisade, and $3.35 from Palisade to Midvale, a distance of 303 miles. The line from Eureka to Palisade ran through desert region yielding but little steady traffic. It was narrow-gauge and had only been put in condition for light traffic; there were no mines in operation throughout its course, and the only reason advanced justifying a reduction of rates was that complainant proposed to open an abandoned mine, 4 miles from Eureka, on a branch line which had been partly destroyed, from which complainant expected to extract in the neighborhood of 500,000 tons of ore. HELD, that the rates of $5.90 and $2.35 were reasonable and that the establishment of joint through rates was not necessary. Held, further, that the right of defendant to destroy a part of its line and its duty to restore the same, do not present questions for the Commission, which consequently cannot consider the matter of rates from Ruby Hill. Complaint dismissed. Richmond-Eureka Mining Co. v. E. N. Ry. Co., 29 I. C. C. 62.

(c) Higher rates in effect to points on branch line than main line points. Conditions of transportation found dissimilar and complaint dismissed. Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A148.

(d) Disadvantageous operating conditions and light traffic justified higher rates on branch than main line. Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A220.

(e) Garland, Colo., not found entitled to main-line rates on wool to Boston, as prescribed in the Wool Case, 23 I. C. C. 151. McLean & Co. v. D. & R. G. R. R. Co., Unrep. Op. A261.

(f) The Commission has frequently recognized the justification for some additional charge for branch-line hauls. Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 610.

(g) Density of traffic over branch line is said to be about one-eighth of that over the main lines. American Coal & Supply Co. v. C. & N. W. Ry. Co., 30 I. C. C. 492, 493.

(h) While rates from points on short branches may be somewhat higher than rates for like distances from points on main division of system, yet this rule should be applied without undue discrimination. Lumber to Nashville, Tenn., 31 I. C. C. 186, 189.

(i) Rates on wheat and corn and products to points on Fayetteville-Okmulgee branch line of the St. L. & S. F. R. R. not found unreasonable as compared with rates via main line to Fort Smith, Ark. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co. Unrep. OP. A-728.

(j) Complainant attacked the rate of 9c per 100 lbs. minimum 40,000 lbs. on saw-logs shipped from New Meadows, and stations on the P. & I. N. Ry. in Idaho to Boise, Idaho, as unreasonable and discriminatory. New Meadows was 170 miles from Boise; 90 via the P. & I. N. Ry., and 80 via the O. S. L. R. R., their

respective divisions being 5 and 4c on traffic from points over 160 miles from Boise. The P. & I. N. Ry. had a curviture in 90 miles of nearly 28 complete circles, a total of 98 bridges, and formed a link in no other through route. The traffic required 36 cars worth $995 each, and the average loading was 53,000 lbs. The cars were always returned empty. From 9 to 10 loaded, and, with ascending grades, 8 empty cars, constituted a trainload. The per-ton-mile revenue was, on the P. & I. N. Ry., 1.11c and on the O. S. L. R. R. 1c; per car earnings $26.50 and $21.20 respectively. The distance rate of the M. C. R. R. for from 145 to 160 miles was 2.5c; the C. M. & St. P. R. R. rate for 1.. miles was 3c; the C. R. I. P. Ry. rate for 170 miles was 14c. The volume of traffic was light, and the P. & I. N. Ry. had never been a financial success. HELD, that the rate of 9c was unreasonable. A rate of 7c minimum 40,000 lbs. held reasonable on shipments of saw logs from P. & I. N. Ry. stations, New Meadows to Woodland, inclusive to Boise. Boise Lumber Co. v. P. & I. N. Ry., 33 I. C. C., 109.

(k) Cost of service on branch line is greater than on main line. Reshipping Rates on Grain from Omaha, 32 I. C. C., 590, 595.

(l) New and poorly-equipped road exempted on that ground from making same reductions in rates as was required of other carriers in former case. Jeffris v. N. O. M. & C. R. R. Co., Unrep. Op. A-831.

(m) Complainant attacked the joint rates on hardwood lumber from mills on the L. & P. B. Ry., a tapline, at Huttig, Ark., as unreasonable and discriminatory, as compared with rates from the station at Huttig on the rails of the St. L. I. M. & S. Ry. The L. & P. B. Ry. assessed a local charge of 3c per 100 lbs. for switching from complainant's mill to the St. L. I. M. & S. Ry., a distance of but a few hundred feet; though the Commission had in 31 I. C. C., 490, fixed a maximum charge of $2 per car for the service. HELD, that the rate on hardwood lumber from complainant's mill was unreasonable and discriminatory in so far as it exceeded the rate on lumber originating on the St. L. I. M. & S. Ry. at Huttig. Reparation awarded. The Tap Line Case, 34 I. C. C., 116.

(n) The Commission on its own motion considered the reasonableness of rates from San Francisco and San Diego, Cal., Beaver Falls, Pa., and St. Louis, Mo., to points in Nevada on the T. & G. R. R., L. V. & T. R. R., and the B. G. R. R., which rates were on a higher level than those for like distances in other parts of the country. First class rates from San Francisco and Los Angeles, Missouri River, and Pittsburg, to Tonopah and Goldfield were $2.40, $4.05, and $4.75. But it appeared (1) that the roads in question had been constructed solely to meet the needs of the mines at Tonopah and Goldfield; (2) that they operated over irreclaimable deserts with severe grades and difficult operating conditions; (3) had practically no traffic except that in and out of those points, the scale of wages was very high; (4) while the T. & G. R. R. had yielded its owners 10 per cent on their investment the other lines had been operated at a loss; and (5) the population of the mining camps had declined greatly and the outlook was gloomy. HELD, that the investment in railways serving the given territory being of a temporary character, the rates applied were not necessarily unreasonable, though higher than the rates for like distances in other parts of the country. Complaints dismissed. Goldfield Cases, 34 I. C. C. 360.

(o) Complainant attacked the rates on classes and certain commodities from Los Angeles, and San Francisco, Cal., to Delta, Olathe, Montrose, Hotchkiss, and Paonia, Colo., branch-line points on the D. & R. G. R. R., as unreasonable and discriminatory. First class rates from the California terminals were, per 100 lbs; to Delta, $2.94; Olathe, $3.00; Montrose, $3.05; Hotchkiss, $3.08; Paonia, $3.10; as compared with a rate of $2.60 from the terminals to Colorado common points and to Leadville and Aspen. The carload rates on sugar were to Delta, 84c; Olathe, 87c; Montrose, 90c; Hotchkiss, 94c; Paonia, 97c. Those on burlap bags were uniformly 80c. HELD that none of the rates complained of were shown to be unreasonable or discriminatory. Complaint dismissed. Montrose & Delta Counties Frt. Rate Asso. v. D. & R. G. R. R., 34 I. C. C. 409.

(p) If proposed rates are reasonable, they must be permitted to take effect whether bridge tolls are unreasonable or not. On the other hand, if the proposed rates are not reasonable they must be condemned, regardless of the reasonable-

ness of the bridge tolls. Rates on Lumber from Southern Points, 34 I. C. C. 654, 681.

§2. Compared with Main Lines.

See Reasonableness of Rates, §32.

(a) It may be that the branch line justifies somewhat higher rates than would be maintained for a similar main-line haul. Florence Wagon Works v. S. Ry. Co., Unrep. Op. A106.

(b) Higher rates in effect to points on branch line than main line points. Conditions of transportation found dissimilar and complaint dismissed Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A148.

(c) Merely showing that rates are relatively lower to Denver, Spokane and Helena than to Kirby and Thermopolis, Wyo., from Dickinson, N. D., on a branch line in a thinly populated region of country, is not sufficient to establish that the rates are unreasonable. Higgins & McGrath v. C. B. & Q. R. R. Co., Unrep. Op. A184.

(d) Disadvantageous operating conditions on light traffic justified higher rates on branch than main line. Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A220.

(e) While rates from points on short branches may be somewhat higher than rates for like distances from points on the main division of the system, yet that rule should be applied without undue discrimination. Lumber to Nashville, Tenn., 31 I. C. C. 186, 189.

(f) Commission has frequently recognized the justification for some additional charge for branch-line hauls. Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 610.

§3. As Part of System.

(a) Where traffic originates upon a branch line, the main line should accept for its haul from the junction point something less than it receives upon business originating at the junction point. Railroad Commissioners of Florida v. A. C L. R. R. Co., 28 I. C. C. 356, 359.

(b) Complainant attacked the rates on soft coal from Terre Haute, Hymera, and Fontanet, Ind., to Terra Cotta, Ill., as unreasonable, to the extent that the local rate of 75c from Chicago to Terra Cotta, 46 miles, exceeded 60c per ton. The proportional rate to Chicago from Terre Haute and Hymera was 67c and from Fontanet 77c; for distances, respectively, of 178, 204 and 189 miles. Terra Cotta is on a branch of the C. & N. W. Ry., the density of traffic over which is about ⅛ of that on the main lines, and besides, delivery of coal involves a switch movement of 1 mile from station to plant. The 75c rate is 1c below that fixed by the state scale. Although high, it does not differ from that assessed for less expensive service to all points on the C. & N. W. not affected by across-the-lake competition or that of direct lines. For example, the rate to Woodstock, 51 miles from Chicago on the main line to St. Paul was 78c. The rate from Ladd, Ill., to Terra Cotta, 107 miles, was 60c; but applied between points grouped both as to origin and destination, and is made to meet competition of direct lines between Chicago and points in the Northern Illinois Coal district. The rate from Chicago to Milwaukee is 60c for 85 miles; but is governed largely by lake competition. The rate from Milwaukee to Madison, 85 miles, was $1.00; but Wisconsin rates are materially higher than Illinois rates. HELD, that the rates attacked were not unreasonable. Complaint dismissed. American Coal & Supply Co. v. C. & N. W. Ry. Co., 30 I. C. C. 492.

(c) Rates should not be fixed for a main line without reference to branch lines contributing to it. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 485.

§4. In Competition with Main Lines.

(a) Mobile, Jackson & Kansas City was a new and poorly equipped road and for that reason might properly have charged higher rates than its competitors on wooden crossties from points in Mississippi to Chicago and Indianapolis. Jeffris v. N. O. M. & C. R. R. Co., Unrep. Op. A-831.

III. CONTROL AND REGULATION.

See Control and Regulation.

§6. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) Complainant seeking order requiring narrow-gauge line to restore part of tracks it had destroyed, dismissed for want of jurisdiction. Richmond-Eureka

Mining Co. v. Eureka Nevada Ry. Co., 29 I. C. C. 62, 64.

IV. DUTY TO FURNISH FACILITIES.

See Facilities.

§7. In General.

See Cars and Car Supply, §7 (h), (j).

(a) Contention that a lateral branch line is under no obligation to furnish cars, not sustained. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 690.

BREAK-BULK RATES.

CROSS REFERENCES

See Advanced Rates, §17 (p); Evidence, §14 (l), (u); Ferries, (a); Routing and Misrouting, §5 (a).

(a) In view of the lower earnings by the break-bulk route, carriers should, perhaps, not be required to maintain lower rates via this route than via the car-ferry or all-rail routes. Break-Bulk Rates on Grain, 30 I. C. C. 357, 363.

(b) The Crosby Transportation Company performs the "break-bulk-across-Lake Michigan" service of the Grand Trunk Railway system between Grand Haven and Milwaukee. Milwaukee Produce & Fruit Exchange v. Crosby Transportation Co., 30 I. C. C. 653.

BRIDGE TOLLS.

I. REASONABLENESS.
II. DISCRIMINATION.
III. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.

CROSS REFERENCES

See Absorption of Charges, §3 (b); Additional Charges, (e); Additional Charges, (j); Evidence, §14 (5), (a), §43½ (a), (b), (c).

I. REASONABLENESS.

(a) Dividing the valuation placed upon the bridge by the assessed valuation of defendant's line in Iowa and Illinois, it appears that such valuation represents the assessed value of 66½ miles of line. East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427.

(b) Rate of 5c on beer from Dubuque, Ia., to East Dubuque, Ill., involving two switching services, besides use of bridge, not found unreasonable. East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427.

(c) When rates to St. Louis and East St. Louis were made the same, the bridge toll was abolished. Springfield Commercial Assn. v. P. R. R. Co., 28 I. C. C. 511, 513.

(d) In prescribing scale of rates between Iowa and Utah and Colorado points, Commission somewhat influenced by the fact that the Missouri River must be crossed. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 563, 568.

(dd) Construction of bridges across Mississippi River at Alton, Ill., cause of industrial awakening. Alton Board of Trade v. C. & A. R. R. Co., 28 I. C. C. 589, 591.

(e) Carriers should either charge a bridge toll on traffic in both directions at every competitive crossing, or not charge it at any crossing. Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 588.

(f) A bridge toll may not be absorbed at one crossing if it is included in the rate at a competitive crossing. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 573.

(g) No matter in whom the ownership may be, each carrier using a bridge should be required to contribute to its maintenance in proportion to the use made of it. The charges for bridges so maintained partake of the nature of a fixed terminal charge. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 570.

(h) Almost invariably, where bridge tolls are added to the through rate, their explanation is historical. Railroads were built to and from the great rivers. At first, freight was unloaded at the river, and when destined to points beyond, was ferried across and loaded again into the cars of the carrier on the opposite bank. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 569.

(i) It seems reasonable that separate charge should not be assessed for crossing every costly bridge, and that ordinarily, bridges must be regarded as a part of the entire system. That, however, is not necessarily true at all river crossings. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 569.

(jk) A rate 7c higher from East Dubuque, Ill., than from Dubuque, Iowa, to Iowa points, owing to crossing a bridge, not found unreasonable. East Dubuque Supply Co. v. I. C. C. R. R. Co., Unrep. Op. A403.

(l) Charge of 8c from Easton, Pa., to Phillipsburg, N. J., owing to crossing a bridge, not found unreasonable. Beaver Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A545.

(m) A bridge between points in Covington, Ky., and Cincinnati, O., is an interstate bridge and therefore a Kentucky street railroad which operates connection with an Ohio street railroad operating on the Ohio side of the bridge in transporting passengers in continuous trips and under single fare across such bridge is engaged in interstate commerce. South Covington & Cincinnati Street Ry. Co. v. City of Covington, 35 Sup. Ct. Rep. 158, 160, 235 U. S. 537, 59 L. ed.

(n) Bridge toll involved in connection with route via which grain screenings moved from South Chicago to Owensboro, Ky. Reparation denied. American Milling Co. v. C. I. & S. R. R. Co., Unrep. Op. A-795.

(o) The addition of an arbitrary of 25c for passage over bridge to fare between Little Hocking, Ohio, and Parkersburg, W. Va., does not constitute a discrimination against the former in favor of other points. Cunningham v. B. & O. S. W. R. R. Co. Unrep. Op. A-798.

(p) Arbitrary of 25 cents for passage over bridge added to two-cent fare of Ohio Commission in constructing fare from Little Hocking to Parkersburg, W. Va. Rates not unreasonable. Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op. A-798.

(q) Arbitrary of 25c for passage over bridge added to two-cent fare of Ohio Commission in constructing fares to Parkersburg, W. Va., from Little Hocking and Marietta, Ohio, and other points. Rates not found unreasonable. Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op. A-798.

(r) Bridge toll included in rates in rough walnut logs from points in Missouri and Arkansas to East St. Louis, Ill. East St. Louis Walnut Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-941.

II. DISCRIMINATION.

See Discrimination.

(a) The commercial organization of Paducah, Ky., attacked the rates on potatoes, cabbages, onions, beans and canned goods from points in Central Freight Association and Western Trunk Line territories to Paducah, and on lumber in the opposite direction, as unreasonable and unduly discriminatory, because 2c higher than the rates applying to Cairo, Ill. Cairo is located on the north bank of the Ohio River and Paducah on the south bank, about 40 miles east of Cairo. The distances from lumber-producing points in the South to the consuming markets north of the river, and from points of origin of produce and canned goods north of the river to points in Kentucky and Tennessee through Paducah and Cairo, are approximately the same. In hauling produce and canned goods from the North to Paducah, and lumber northward from Paducah, it is necessary to cross the Ohio River, which is not the case at Cairo. South of the river this situation is reversed. In hauling lumber, inbound, and produce and canned goods, outbound, it is necessary to cross the Ohio River at Cairo, and not at Paducah. The rates on produce and canned goods are the same to Paducah and Cairo from points in Trunk Line Territory and from the eastern half of Ohio in Central Freight Association Territory, but lumber rates from Paducah to those points are 2c higher than from Cairo. Jobbers of produce and canned goods at Paducah are in active competition with others at Cairo. Potatoes, cabbages, onions, beans and canned goods are shipped to Cairo and Paducah from Wisconsin, Michigan, Indiana and Illinois points, and shipped out again, principally to Kentucky and Tennessee points. Paducah receives about 500 cars of potatoes, cabbages and onions annually from the territory described in the complaint. Several manufacturers of wood articles are located at Paducah. Great quantities of lumber are produced south of the Ohio River. Rehandling yards are located at nearly all Ohio River crossings, where lumber from smaller mills in the South is classified as to different kinds, grades and sizes, and then shipped to points in Central Freight Association, Trunk Line and Western Trunk Line territories. It appeared that Paducah was given no advantage in the rates to and from points

south of the Ohio River, corresponding to Cairo's advantage in rates to and from points north of the river. The rates on produce and canned goods from Cairo to equi-distant points in Kentucky and Tennessee are uniformly the same as from Paducah to the same points, although the haul from Cairo involves the additional service of crossing the Ohio River. Lumber-producing points throughout the Mississippi Valley, east and west of the river, are practically equi-distant from Cairo and Paducah. Lumber rates from the northern half of the Mississippi Valley east of the river are the same to Cairo and Paducah, and from the southern half are almost universally 2c higher to Paducah than to Cairo. In the movement of canned goods, outbound from Cairo, and of lumber inbound, the Ohio River is crossed by a bridge, while at Paducah it is crossed by car ferry, involving the switching of a car to the ferry and later to a train. It appeared, however, that the operation of the car ferry is a profitable enterprise, owing to the large C. B. & Q. R. R. traffic which crosses it and pays a toll therefor to the defendant. HELD, that a charge may properly be made for the additional service of crossing the Ohio River in hauling lumber from, and produce to, Paduah, and that the rates attached are unreasable to the extent that the Paducah rates should not exceed those applying to Cairo by more than 1c per 100 lbs. Paducah Board of Trade vs. I. C. R. R. Co., 29 I. C. C. 593.

(b) Carriers should either charge a bridge toll on traffic in both directions at every competitive crossing, or not charge it at any crossing. Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 593.

(c) Bridge charges are similar to terminal charges; they should be based upon the cost of service. The southern carriers can not elect to absorb all or part of the bridge toll on traffic to north-bank Ohio River points if to do so results in undue prejudice and disadvantage to south-bank points. Question of absorption of bridge tolls is largely one of policy with carrier, and it may absorb or not so long as the alternative adopted does not place an undue burden upon a shipper or locality. Norman Lumber Co v. L. & N. R. R. Co., 29 I. C. C. 565, 570

BULK HEADS

See Allowances, §8 (6), (d); Cars and Car Supply, §7 (d), §8 (g); Facilities and Privileges, §2½, §12½ (b); Inter-Interstate Commerce, §4 (l).

BURDEN OF PROOF

See Advanced Rates, §1 (1), (a), §2½ (g), (h), (z), §3; Evidence, I; Discrimination, §14; Facilities and Privileges, §15 (4m); Long and Short Hauls, §12 (l); Loss and Damage, §15; Reasonableness of Rates, §1 (b); Released Rates, §6 (f).

BUSINESS SECRETS

I. DISCLOSURE FORBIDDEN.

See Bills of Lading, §2½ (b); Storage, §1 (a), §2 (l); Terminal Facilities, §7 (e).

(a) Under section 15 of the Act it is unlawful for a common carrier to disclose to the ultimate consignee the name of the original consignor of a shipment reconsigned in transit by the original consignee. In the Matter of Freight Bills, 29 I. C. C. 496, 498.

(b) Issuance of new bills of lading, concealing names of original shippers, in exchange for old bills of lading, is not a thing which may be demanded or required of a common carrier as a matter of right, and is not shown to be a general necessity. Jung & Sons v. L. & N. R. R. Co., 31 I. C. C. 455, 457.

(c) Reconsignment of shipment by original consignee may bar ultimate consignee from demanding name of original consignor. Michigan Steel Boat Co. v. M. C. R. R. Co., 32, I. C. C., 576, 577.

CABLE RATES.

(a) Jurisdiction over cable rates is clearly conferred upon the Commission by the act to regulate commerce. White v. Western Union Teleg. Co., 33 I. C. C., 500, 502.

CANADA

See Adjacent Foreign Country; Evidence, §13 (1), (kk); Foreign Commerce, §1 (a); Tariffs, §1 (b).

CAR FERRY

See Advanced Rates, §17 (p); Allowances, §8½; Break Bulk Rates, (a); Ferries; Routing and Misrouting, §5 (a).

CARS AND CAR SUPPLY

I CONTROL AND REGULATION.
A. Jurisdiction of Commission.
§1. Over car distribution.
§2. Car regulations.
§3. Fuel cars.
§4. Private cars.
§5. Intrastate cars.
§6. To award damages.
§6½. Mine rating.
§6¾. Regulations in general.
II. DUTY TO FURNISH CARS.
§7. In general.
§7½. Inspection.
§8. Size and kind ordered by shipper.
§9. Form of order.
§9¼. Gondola cars.
§9½. Heater cars.
§9¾. Peddler cars.
§9⅞. Miscellaneous cars.
1. Station-order cars.
2. Trap cars.
§10. Tank cars.
§10½. Private cars.
§11. At transit point.
III. ASSIGNMENT AND DISTRIBUTION.
A. Counting of cars.
§12. In general.
§13. Private cars.
§14. Foreign cars.
§15. Railway fuel cars.
§16. Pooling by shipper.
§17. Tank cars.
§18. Detention of cars.
§19. When counted for loading.
§20. Car famine.
§21. Reward for prompt release.
§21½. Shippers on branch lines
B. Rating of Mines.
§21¾. In general.
§22. Coke-oven basis.
§23. Commercial plus physical capacity.
§24. Idle-hour system.
§25. Mine capacity plus shipments.
§26. Physical capacity less railway fuel.
C. Removal of Discrimination.
§27. Effect.
IV. CONTRACTS FOR CAR SUPPLY.
§28. In general.
V DUTY TO TRANSPORT CARS.
§29. In general.
§30. Interchange of cars.
§31. Private cars.
§32. Rates on private cars.
§32¼. Quarantine regulations.
VI. REMEDIES AND DAMAGES.
§32½. In general.
§33. Action at law.
§34. Defenses.
§35. Res adjudicata.
§36. Evidence.

CROSS REFERENCES

See Advanced Rates, §2½ (l); Financial Operation, §1 (g); Classification, §17 (aaaaa); Switch Tracks and Switching, §7 (a); Tariffs, §14 (a).

I. CONTROL AND REGULATION.

See Control and Regulation.

A. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

§1. Over Car Distribution.

(a) The distribution to shippers of coal cars, including those owned by shippers and those used by the carrier for its own fuel, in interstate commerce, is a matter involving preference and discrimination, and one for investigation by the Interstate Commerce Commission. W. & A. R. Co. v. White Provision Co. (Ga., 1914), 82 S. E. 644.

(b) Complainants requested reparation for damages occasioned by the alleged failure of the defendant upon reasonable request to furnish cars for the shipment of coal from complainants' mines; defendant denied the Commission's jurisdiction and argued that the question raised is one for the determination of the courts. HELD, (1) the question as to the extent to which defendant failed to comply with the duty it owed complainants was an administrative one, of which the Commission alone could take original jurisdiction. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52.

(c) Under the act as originally passed, the Commission did not have jurisdiction to require carriers to provide proper and adequate car equipment. Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C., 179, 185.

§6. To Award Damages.

(a) Plaintiff began suit against the F. & P. Ry. Co. and the K. C. S. Ry. Co. to recover damages for their refusal to

furnish cars for loading oak railway ties at points on their lines in Arkansas and Louisiana for shipment to Linwood, Kan., beyond their lines; such refusal being justified on the ground that their joint through lumber tariff did not include a rate on such ties, crossties being a separate and distinct freight commodity. HELD, that the matter was one coming primarily within the jurisdiction of the Commission, and hence one which a court could not pass upon in the absence of prior action by that body. T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 888; 234 U. S.—., 58 L. ed.—.

(b) Acceptance by a carrier of interstate shipments of railway cross-ties destined to a point beyond its line under its joint through lumber rate, does not authorize suit by shipper for damages for failure to accept further shipments, in the absence of previous action by the Commission, where the carrier bases its refusal on the absence of any applicable filed and published rate, contending that ties are not covered by its tariff fixing joint through lumber rates. T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup Ct. 885, 889; 234 U. S.—., 58 L. ed.—.

§6¾. Regulations in General.

(a) Carrier may require shippers to partition cars for mixed shipments of live stock. Lee v. St. L. S. W. Ry. Co., 29 I. C. C. 10, 102.

II. DUTY TO FURNISH CARS.

See Branch Lines, IV; Through Routes and Joint Rates, §25 (i).

§7. In general.

See Act to Regulate Commerce, II (f); Advanced Rates, §7 (6), (b); Loss and Damage, §2 (m); Through Routes and Joint Rates, §25 (a), (b), (c), (e), (f).

(a) The C. & S. E. Ry., which is a plant facility of the Victor-American mines, operates by trackage agreement over lines of other carriers. The inclusion of the mines of the C. & S. E. Ry. in the ratings of the D. & R. G. and C. & S. R. R. works an undue discrimination. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 507.

(b) Each carrier subject to the Act is charged with the duty of furnishing cars to industries located upon its line. In case of through routes, the obligation to furnish cars for shipments to points upon the lines of its connections is joint with such connections. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 506.

(c) That portion of section 1 which makes it the duty of every carrier subject to the Act to provide transportation, including cars, upon a reasonable request therefor, must be read into and made a part of that portion of section 1 which deals with the matter of switching conections between common carriers and lateral branch lines. Campbell's Creek Coal Co. v. A. A. Ry. Co., 29 I. C. C. 682, 690.

(d) Shippers frequently nail their bulkheads and false flooring to the car, even though the tariffs forbid them so to use refrigerator and produce cars. Every nail that is driven into these cars punctures the insulating materials, upon the integrity of which their usefulness depends. It would seem that shippers and carriers should co-operate in the use and maintenance of such equipment, the carriers by providing dead pieces into which nails may be driven without injuring the car, and the shippers by placing nails only where they can be used without injury to the insulation. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437. 442.

(e) In case of a through rate, obligation to furnish cars is joint and rests upon all participating carriers. It is the duty of the carrier to furnish cars, under section 1. Lumber Rates through Ohio River Crossings, 29 I. C. C. 38, 39.

(f) No presumption that carriers will fail in duty to furnish equipment. Lumber Rates through Ohio River Crossings, 29 I. C. C. 40.

(g) There is no such thing as local traffic that enjoys rights superior to through traffic in matter of car furnishing. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 624.

(h) In case of through routes, the obligation to furnish cars is joint upon the carriers therein, including lateral branch lines. Contention that a lateral branch line is under no obligation to furnish cars not sustained. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 690.

(i) Carrier meets its obligations under the law when it equips itself with sufficient cars to meet requirements of its shippers and establishes with its connections equitable car-interchange ar-

rangements. No obligation rests on carrier to possess itself of special equipment in such amount that a considerable portion of it would remain idle for six months in the year. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 623, 624.

(j) Undue discrimination for the defendant to prefer branch-line points to main-line points in supplying cars for live stock shipments. Wright v. C. & N. W. Ry. Co., Unrep. Op. A451.

(k) Car furnished had some framework placed therein by former shipper. Complainant should have removed it or made a request to the carrier. Carrier not at fault for not being able to load full minimum weight. Dorschel Produce Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A489.

(l) Carrier furnishing car furnished with lining and stoves and deducting 1,000 lbs. on shipment of potatoes not found unreasonable. Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A539.

(m) There is an additional advantage in getting private-line equipment, in that it may go to any destination or any line, while foreign-line cars are ordinarily returned to the owning road, connecting lines being given as many loaded cars as they have delivered empty cars to the originating carrier. Rental Charges for Insulated Cars. 31 I. C. C. 255. 256.

(n) Complainant, operating a sand and gravel pit on the C. T. H. & S. E. Ry. within switching limits at Terre Haute, Ind., complained of the refusal of defendants, in times of car shortage. to furnish cars for interstate shipments to points on the V. R. R., as discriminatory in favor of other shippers at Terre Haute, and asked reparation for amounts expended in repairing defendants' cars. Though a reciprocal switching arrangement existed under which shipments destined to Illinois points on the V. R. R. were switched to that line at $2.00 per car, at times of car shortage both railroads refused to furnish equipment for such traffic, each claiming it was the duty of the other. HELD, that it was the duty of the V. R. R. to furnish the equipment necessary for the traffic in question, without undue discrimination in favor of shippers located on its line. Reparation denied. Wabash Sand & Gravel Co. v. V. R. R. Co., 31 I. C. C. 344

(o) The carrier's duty to furnish equipment includes, necessarily, the obligation to furnish equipment in good repair and suitable condition for the transportation which it holds itself out to perform. Wabash Sand & Gravel Co. v. V. R. R. Co., 31 I. C. C. 344, 346.

(p) Contention that carrier could not be required to furnish its own cars and accept a short haul thereon when shipments could have been routed via a junction point thus giving it a longer haul, not sustained. Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C.. 142, 143.

(q) Shipper not concerned with arrangements between the two carriers for furnishing equipment under through rates offered via the different gateways. Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C., 142. 143.

(r) Carriers' duty to furnish equipment includes the obligation to furnish equipment in good repair and suitable condition for transportation. Wabash Sand & Gravel Co. v. V. R. R. Co., 31 I. C. C., 344, 346.

(s) Held to be duty of Vandalia R. R. to furnish cars for shipment of sand and gravel without discrimination in favor of shippers on its own line. Wabash Sand & Gravel Co. v. V. R. R. Co., 31 I. C. C. 344.

(t) Carrier's duty to furnish equipment includes obligation to furnish in good repair and suitable condition. Wabash Sand & Gravel Co., v. V. R. R. Co., 31 I. C. C., 344. 346.

(u) To furnish cars is an obligation that rests on all carriers parties to. Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C.. 660. 663.

(v) To furnish cars is an obligation that rests on all carriers parties to joint rates. Pittsburgh & Southwestern Coal Co. c. W. P. T. Ry. Co., 31 I. C. C., 660, 663.

(w) Complainant, representing companies operating grain elevators at country stations in Illinois, Iowa, Minnesota, Nebraska, Kansas, and North and South Dakota, sought an order requiring defendants to furnish cars for shipment of grain in bulk that were clean and in good repair and properly equipped with grain doors, or provide for an allowance to shippers for labor done or materials furnished in preparing cars for such loading. While carriers expended large sums for inspection and repairs, they observed no uniformity in the furnishing

of sectional doors, boards, lath, burlap, etc., and shippers were required to repair as well as clean a large percentage of the cars sent them before loading. But at terminal points, the carriers made all necessary repairs. Grain from terminal points was not, however, sold in competition with that of the country elevator. HELD, (1), that it was defendants' duty to furnish suitable cars for traffic, but (2) that it was not unreasonable to expect shippers to do a limited amount of cleaning and to make inexpensive repairs, but (3) that it would be impracticable to fix by order any allowance to be paid shippers therefor; (4) that carriers should specify in their tariffs what materials they would furnish, which should be uniform and adequate (5) carriers' practice at terminal points with reference to preparing cars, not found to be unjustly discriminatory. Complaint dismissed. Farmers' Cooperative Asso. v. C. B. & Q. R. R., 34 I. C. C., 60.

(x) It is the duty of carriers to furnish cars suitable to transport in safety traffic which they hold themselves out to carry. This duty is not fulfilled when a carrier furnishes a car, upon reasonable request of a shipper, which requires repairing to prevent leakage of grain in transit. Farmers' Cooperative Asso. v. C. B. & Q. R. R., 34 I. C. C., 60, 64.

(y) In the very nature of things the shipper who loads the car can prepare it for loading to better advantage than can anyone else. It is therefore not unreasonable to expect the shipper to sweep a car or do a reasonable amount of cleaning, or to make some minor and inexpensive repairs to prepare the car for loading and prevent leakage of grain in transit. It is impracticable for the carriers to have competent workmen at all stations to do this work, and minor cleaning, patching, and coopering can readily be done by men in the employ of the elevator companies, who know exactly what is to be done and how best to do it. Farmers' Cooperative Ass. v. C. B. & Q. R. R., 34 I. C. C., 60, 64.

(z) If the car furnished requires much repairing, if its door posts are shattered or broken, or if it has many holes or cracks through which grain would sift in transit, the shipper should refuse to accept it. The obligation of the carrier is to promptly furnish a suitable car. The shipper is not bound to receive and load a car upon which he must expend labor and materials to make it suitable to transport grain. Farmers' Cooperative Asso. v. C. B. & Q. R. R., 34 I. C. C., 60, 64.

(aa) A carrier must do more than provide itself with sufficient equipment for the slack period of coal production. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52.

(bb) A carrier must assume the burden of explaining or excusing its failure to furnish cars. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52.

(cc) While the responsibility to the shipper of furnishing a proper supply of cars rests upon the road upon which the shipper is located and the traffic originates, the originating line, as between it and its connections, does not necessarily rest under the burden of supplying all the cars which may be required for transportation over through routes under joint rates. Campbell's Creek Coal Co. v. A. A. R. R., 33 I. C. C., 558, 562.

(dd) Carriers may, as between themselves, properly make rules to secure the return of empty cars from or to foreign lines, but they owe the duty to furnish promptly equipment for shipments, and they may not, under guise of enforcing transportation rules as to the return of equipment, impose undue burdens upon shippers. Pine Belt Lum. Co. v. G. & S. I. R. R., 33 I. C. C., 117, 118.

(ee) If carrier shall be unable to provide an adequate supply of cars, it cannot reasonably be presumed that it will deny itself the benefits of moving traffic originating on its own line by refusing to open another route. Routing of Bauxite Ore to Chicago Heights, Ill., Unrep. Op. A-842.

(ff) Section 1 of the act provides that it shall be the duty of every carrier subject to the provisions of the act "to provide and furnish" transportation, including cars, upon reasonable request therefor. This does not require the carriers' ownership of cars, but places upon them the duty to provide cars, which may be cars of their own or cars which they have secured in some other manner. The carriers, subject to the Act, are to obtain and have ready for future use, "all cars and other vehicles and all instrumentalities and facilities of shipment or carriage," and furnish the same upon reasonable request. The power of

the Commission to require the carriers to comply with their duty is subject only to the provisio that the request for "cars and other vehicles" and the "instrumentalities" and "facilities" of transportation shall be reasonable. Whether or not a particular request is reasonable is a matter for the Commission to decide in each particular case. Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C., 179, 186.

(gg) A carrier cannot be required to furnish all the cars which may be demanded by a shipper under extraordinary conditions arising from exceptional causes, which could not reasonably have been anticipated and which make it physically impossible to furnish all the cars desired. Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C., 179, 194.

(hh) One of the tests which may be relied upon in determining the reasonableness of a shipper's request for cars is to be found in the volume of his shipments in the past, due allowances being made for the growth of his business. Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C., 179, 194.

(ii) The responsibility to the shipper of furnishing a proper supply of cars rests upon the road upon which the shipper is located and the traffic originates. The originating line as between it and its connections does not necessarily rest under the burden of supplying all the cars which may be required for transportation over through routes and under joint rates, but in the case of through routes composed of two or more carriers the obligation to furnish cars for transportation over such through routes is joint upon the carriers therein. Pennsylvania Paraffine Works v. Penn. R. R. 34 I. C. C. 179. 194.

§8. Size and Kind Ordered by Shipper.

See Minimums, §4.

(a) In the original report, 26 I. C. C. 681, the Commission considered rules formulated by northwestern railways, governing winter transportation of potatoes. These rules prohibited shipment between November 1 and April 15 unless the shipper lined the car, put in a stove, and furnished an attendant to accompany the car, the latter to be responsible for heating and ventilation, the stove and lining to be returned free only on a regular bill of lading taken out by the consignee or shipper's representative. After both a tariff based on the report of the Commission, and likewise amendments thereto had been rejected by the shippers, the carriers proposed shippers be given an option as to manner of shipment; either (1) shipping in refrigerator cars at the carrier's risk, at rates made with reference to those found reasonable in 25 I. C. C. 159, or (2) shipping in cars lined and protected by the shipper, at a lower rate, the shipper to assume risk of weather damages. HELD, that no reasonable objection can be advanced against the publication in a tariff of an alternative provision of this nature; but the carriers, in wording the provision, should make it plain that they will not in any event seek to escape responsibility for loss occasioned by their negligence. Protection of Potato Shipments in Winter, 29 I. C. C. 504.

(b) Rule that where double-deck cars are ordered and carrier cannot furnish same, two single-deck cars would be furnished instead, restricted from certain territory. HELD, unduly prejudicial and reparation awarded. McKendree v. S. P. Co., Unrep. Op. A216.

(c) The Commission's rulings with reference to furnishing two small cars in lieu of a large car ordered by a shipper, relate only to cases where the tariffs provide graduated minima for cars of different sizes, and do not relate to commodities as to which a specified minimum applies to cars of all sizes. Smith System Heating Co. v. G. N. Ry. Co., Unrep. Op. A296.

(d) Tariff held to be unreasonable in that it did not contain provision that when a shipper orders a car of greater dimensions than that furnished by the carrier, a smaller car may be used and charges collected on basis of actual weight when car furnished is loaded to its full visible capacity. Hastings Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A399.

(e) One car ordered, two furnished; under the circumstances no reparation should be awarded through L. C. L. rates applied on the follow lot. Woods-Evertz Stove Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A469.

(f) "Short" car ordered and a single-deck car furnished; complainants constructed a temporary upper deck. HELD, that the car was not a double-deck car within the meaning of defendant's tarriff.

Long & Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A486.

(g) Shippers frequently nail their bulkheads and false floors to the car. Carriers should provide dead pieces into which nails may be driven without injury to the car. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 442.

(h) Cars for banana traffic must be equipped with false floors. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 517.

(i) Standard cars in good repair will accommodate all ordinary and usual needs of shippers, and if more is demanded, some obligation must attach to the shipper. Dunnage Allowances, 30 I. C. C. 538, 542.

(j) Larger car furnished than one ordered. Minimum for size of car ordered should have applied. Reparation awarded. Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-588.

(k) Shipper not liable for penalty where connecting lines had notice that charges were collected on basis of smaller car ordered. Gisholt Machine Co. v. C. & N. W. Ry. Co., Unrep. Op. A-618.

(l) Carrier furnished 40-foot car instead of 36-foot car ordered. Reparation awarded. Conference ruling 274, cited. Gisholt Machine Co. v. C. & N. W. Ry. Co., Unrep. Op. A-618.

(m) Shipper ordered flat car for transportation of rails from Loon Lake, N. Y., to Hoosac Tunnel, Mass., and the additional expense for equipping them with stakes and head-blocks is not properly chargeable to carrier. Reparation denied. H. T. & W. R. R. Co. v. D. & H. Co., Unrep. Op. A-639.

(n) Minimum weight for size of car ordered should have applied on two shipments of slabwood from Heineman's Mill and Tigerton, Wis., to South Chicago, Ill. Moerke v. C. & N. W. Ry. Co. Unrep. Op. A-703.

(o) Rule providing that larger car may be used on basis of minimum weights for size of car ordered only when shipment could have been loaded into or upon car of size or capacity ordered, not found unreasonable. Moerke v. C. & N. W. Ry. Unrep. Op. A-712.

(p) Under a tariff which provides if the company cannot furnish double deck equipment and shipments move in single deck cars, the rates provided for the latter will be charged, in the event single deck cars are furnished by the railroad on account of its failure to furnish double deck cars as ordered, only the rates applicable to the double deck cars can be collected. So. Pac. Co. v. Frye & Bruhn, (Wash., 1914), 143 Pac. 163, 165.

(q) When double-deck car is ordered and for convenience two single-deck cars are furnished, charges should be at rate for car ordered, provided shipment could have been loaded therein. American National Live Stock Asso. v. S. P. Co., 32 I. C. C. 515, 520.

(r) Carrier furnished 44-foot car for its own convenience instead of 36-foot car ordered. Refund made and complaint dismissed. Beaumont Iron Works Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-853.

(s) Fact that carrier had only 100 cars of size ordered no justification for applying minimum on two smaller cars furnished for carrier's own convenience. Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-921.

(t) Charges on shipment of cedar poles from Shepley, Wis. to Decatur, Ill., for which 45-foot car was ordered, but two smaller ones furnished found to have been unreasonable. Reparation awarded. Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-921.

(tt) The power to require proper and adequate cars for the transportation of passengers, or of oil in bulk, is one thing. The power to require that such cars be of peculiar or especial design, pattern, or material is quite another thing. At common law, shippers had a present remedy in the courts by suit for damages in case of a carrier's failure to perform its duty to transport safely. One of the conditions, however, which led to the passage of the Act and of the amendments thereto was the inability of shippers to find a present remedy in the case of rates charged for transportation of goods or regulations or practices affecting such transportation which were unjust, unreasonable, or discriminatory. And, as clearly appears from a reading of the provisions which were added by the amendment of 1906, Congress at that time had in mind giving shippers a more adequate remedy in case the facilities for transportation

were inadequate. Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C., 179, 188.

(u) Where it appears that a shipper of sheep ordered double deck cars and none being available the agent of the carrier furnished single deck cars, promising to protect the rate applicable to double deck cars and the shipper pays the rate applicable to single deck cars and subsequently the difference between such rates and that applicable to double deck cars is refunded by the carrier, and after more than two years have elapsed from the time of delivery of such shipments the carrier brings suit to recover such alleged undercharge, the action cannot be maintained. So. Pac. Co. v. Frye & Bruhn, 143 Pac. 163, 165.

(v) Under a tariff which provides if the company cannot furnish double deck equipment and shipments move in single deck cars, the rates provided for the latter will be charged in the event single deck cars are furnished by the railroad on account of its failure to furnish double deck cars as ordered, only the rates applicable to the double deck cars can be collected. So. Pac. Co. v. Frye & Bruhn (Wash. 1914), 143 Pac. 163, 165.

§9. Form of order.

(a) Tariff rule may not confer upon shipper right to order a car of capacity less than minimum weight named in tariff. Lamson Bros. & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-882.

§9¼. Gondola Cars.

(a) Complainant attacked the rate of $1.40 per ton on coal from Manitowoc, Wis., to St. Paul, Minn., assessed on two cars of coal, originating in West Va. The shipments were loaded in gondola cars. the sides of which exceeded 52 inches in height. The rate applied under the tariff on soft coal when loaded in cars exceeding 52 inches in height. It was alleged this rate was excessive to the extent it exceeded the rate of $1.15 applying on coal loaded in cars not exceeding 52 inches in height. (Since the filing of the complaint the two rates were increased to $1.25 and $1.50 respectively.) Gondola cars exceeding 52 inches in height are hopper bottom cars of the battleship type. These cars are undesirable to defendant, since they are not adapted to the loading of commodities other than coal and it is impossible to find return loading for them. Defendant must pay per diem charges on them and bear the expense of returning them to connections. Gondola cars of other types may be used for other loading. The rate of $1.15 was established to meet competition via Duluth, from which there is a rate of 90c to St. Paul, applicable to cross lake traffic; that the $1.15 rate was restricted because it was so low as to be unprofitable if extended to shipments loaded in cars that could not be returned loaded. It was further stated that the difference of 25c in the rate was intended to be an embargo. HELD, that defendant's practice affecting the receipt and charge for the transportation of coal when loaded in gondola cars exceeding 52 inches in height constitute an unlawful and unreasonable regulation and restriction upon such traffic and the shippers thereof. Reparation awarded. C. G. Blake Co. v. M. St. P. & S. S. M. Ry. Co., 32 I. C. C. 270.

§9½. Heater Cars.

(a) An initial carrier which issues bills of lading only over its own line, which do not provide for the heating of cars, is not liable under the Carmack amendment upon a special agreement to heat, made by a connecting carrier. The latter being the first carrier to contract with the shipper with respect to heating, is, as to defaults in heating in the course of transportation, to be deemed the initial carriers. Ross v. M. C. R. R. Co. (Me., 1914), 90 Atl. 711, 713.

(b) The Rental charges for insulated cars, 31 I. C. C., 255, the Commission authorized the following provision in tariffs naming rates on potatoes: "When shipper orders a refrigerator or other insulated car to be heated by him or to move without heat, a charge of $5 per car per trip will be made for the use of the car and will accrue to the owner thereof." Respondents sought to amend the provision by eliminating the words "and will accrue to the owner thereof," which it appeared had been inserted through inadvertance. HELD that respondents had justified the proposed change. Order of Suspension vacated. Rules Governing the Transportation of Potatoes, 34 I. C. C., 255.

(c) Where heater service is performed by the shipper and loss or damage results from frost or overheating, not the direct result of negligence of the carrier, such loss or damage is not

caused by the carrier. It follows that a rule relieving the carrier from liability in such cases does not violate the Cummins Amendment of March 4, 1915, to section 20 of the act to regulate commerce. Miller & Co. v. N. P. Ry., 34 I. C. C., 154, 157.

§9¾. Peddler Cars.

(a) Peddler car rates should be fixed at certain percentages above carload rates Rates on Packing-house Products, 28 I. C. C. 599, 600.

(b) A peddler car is a car loaded with perishables for delivery at two or more destinations. It is generally loaded with freight requiring the protection of ice, and its purpose is to enable the movement of small lots of freight to several destinations without transfer. Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 554.

(c) Peddler-car service affords the most practicable method for distribution over wide areas. Rules Governing Shipments of Freight in Peddler Cars, 32 I. C. C., 428, 433.

§9⅞. Miscellaneous Cars.

(1) Station-Order Cars.

(a) A station-order car is one loaded with miscellaneous less-than-carload freight for two or more destinations on the same local freight train division. It differs from a trap car in that the purpose of the station-order car is to permit its being put into trains without rehandling at the railway's freight warehouse. Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 554.

§9⅞. (2) Trap Cars.

(a) A trap is a car loaded with one or more less-than-carload shipments at points on provate or assigned sidings, for distribution at the railway freight warehouses into regular package or other cars for forwarding. Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 554.

§10. Tank Cars.

(a) Tank cars used for fuel oil generally must be returned empty from destinations. Fairmont Creamery Co. v. A. T. & S. F. Ry. Co., 29 I. C. C. 661, 662; Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707, 708

(b) 7ɔ-cent rate applicable on creosote, in tank cars, from Galveston, Tex., to San Miguel and Fresno, Cal., not found unreasonable. Colainga Water & Electric Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-871.

(c) Complainant alleged that defendant had refused to furnish tank cars upon reasonable request, in violation of the Act. About 250,000,000 barrels of crude oil were produced annually in the United States, 91 per cent of the refined product of which was shipped in tank cars, principally owned by the shippers. There were approximately 40,000 privately owned cars; defendant owned 499 cars, 482 of which were furnished shippers located on its lines; and other railroads east of the Mississippi River owned only 303 tank cars. Complainants owned 111 cars, not sufficient to meet their requirements, and demanded that defendant furnish the necessary tank cars for the transportation of their products. Defendant notified them that it was not prepared to increase its tank car equipment, but was prepared to transport the commodity in barrels. Cost to purchaser of oil transported in barrels was from 3½ to 3¾c per gallon above the cost when shipped in tank cars. The price of lubricating oil was from 2½ to 22c per gallon f. o. b.; burning oil, from 4 1-2 to 5 3-4c; gasoline, from 9½ to 17½c; thus making an addition of 3½c prohibitive. HELD; (1) that defendant should upon reasonable request and reasonable notice, furnish tank cars in sufficient number to move complainant's normal production; (2) that defendant could not be required to furnish all the cars which might be demanded under extraordinary conditions arising from exceptionable causes which could not reasonably have been anticipated. (Three commissioners dissenting). Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C., 179.

(d) For the shipment of some of the products which now move to a certain extent in tank cars, it would not be reasonable to require carriers to furnish tank cars. In many industries a few tank cars will suffice to move the products of the industry. In other cases, the tank cars must be prepared for shipment in a manner which is peculiarly within the technical knowledge of the men connected witn the industry, or the handling of the commodity is a dangerous operation which can be safely performed only by men engaged in its production. In the latter case a

shipper's request for cars peculiarly suited for the transportation of his products would not be a reasonable one, and in such cases carriers should publish rates for the transportation of the privately owned tank car filled with these products and not, as in the case of oil, for the transportation of the product in tank cars. The railroad would not then hold itself out to transport the commodity in other way than in tank cars offered by the shipper, and no obligation would rest upon it to furnish these cars. In such cases the shipper would receive no rental for the use of the car. Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C. 179, 193.

(e) All cars used by carriers, whether they be owned by the carriers themselves or leased from private car lines or from shippers, must be distributed without discrimination. Hereafter the cars leased carriers by shippers or private car lines will be regarded as cars controlled by the carriers, which must be distributed without discrimination just as in the case of cars owned by the carriers. This includes all cars secured from shippers for the use of which carriers pay compensation. Carriers should lease cars only upon such terms as permit them to meet their obligations to furnish cars without discrimination. Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C., 179, 193.

§10½. Private Cars.

(a) The direct cost and revenue loss attendant upon the practice of transporting private cars gratis are less serious than its demoralizing effect. It is natural that subordinates should be wasteful when their superiors are extravagant; and that efforts to secure economies should often prove futile when, at the expense of stockholders or the public, the luxury of a private car is freely granted for personal and private use of railway officers and members of their families. The Five Per Cent Case, 31 I. C. C. 351, 410.

(b) Free transportation of private line, a burden upon the railway passenger service. Five Per Cent Case, 31 I. C. C., 351, 410.

§11. At Transit Point.

(a) Defendant's failure to furnish cars at transit point within the transit time limit on shipments of broom corn from Quinlan, Okla., to Amsterdam and South Amsterdam, N. Y., stored in transit at Sterling, Kans., resulted in application of local rates on outbound shipments. Held, unreasonable. Case held open for proof. Peck v. A. T. & S. F. Ry. Co., Unrep. Op. A-923.

III. ASSIGNMENT AND DISTRIBUTION.

A. Counting of Cars.

§12. In General.

See Courts, §1 (a).

(a) In the past there have been great injustices in the apportionment of coal cars in times of car shortage, by reason of such apportionment without regard to any general rule. National Coal Co. v. B. & O. R. R. Co., 28 I. C. C. 442, 444.

(b) There should be relative equality in the distribution of such freight cars as are available; first, as between shipping points; and second, as between individual shipments at each of such points. Railroad Commissioners of Iowa v. C. R. I. & P. R. R. Co., 29 I. C. C. 396, 404.

(c) Where a carrier has, solely with a view to giving a particular shipper an unlawful preference, violated its own rules as to distribution by which "private cars were not charged against the distributive share of a mine," and in allotting coal cars to another shipper discriminated against him by counting cars owned by him, it is no position to plead in justification a subsequently promulgated order of the Commission holding such rules of distribution to be in violation of the Interstate Commerce Act and directing the distribution thereunder be discontinued. Stineman Coal Mining Co. v. Pennsylvania Ry. Co. (Pa., 1913), 88 Atl. 761.

(d) The proper distribution of cars is a question of fact to be determined according to the circumstances and conditions existing in each particular case, the principle of stare decisis having little application in proceedings before the Commission of this nature. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 532.

(e) A mine which cokes most of its coal is not entitled to have its whole physical capacity taken into consideration in its allotment of coal cars. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 537.

(f) Where all the mines on the line of a carrier belong to one coal company, the question of equitable car distribution does not arise. Coal and Oil Investigation, 31 I. C. C. 193, 219.

(g) The purpose of a carrier in fixing ratings for mines on its lines is to determine the basis upon which each shall share in the equipment available for coal loading during periods when the supply of cars is insufficient to meet all the requirements. At such times it becomes necessary to place some restriction on all the mines, and in order to do this impartially the practice of rating them and distributing the available equipment pro rata, on the basis of such ratings, has been adopted. Oil and Coal Investigation, 31 I. C. C. 193, 217.

(h) Discrimination by a carrier in the distribution of cars during car shortage periods, in favor of mines controlled by such carrier, is of the most insidious character, calling for drastic action by the Commission. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 536.

(i) Car distribution is logically a question of fact to be determined according to the circumstances and conditions existing in each particular case. The principle of state decisions does not apply. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 532.

(j) Where carrier takes entire output of mine, it has been considered permissible to deduct number of cars delivered to that mine from available supply before prorating among mines shipping commercial coal. Coal and Oil Investigation, 31 I. C. C., 193, 218.

(k) Where a coal company operates several separate and distinct mining properties, having no connection with one another except that they are operated under joint management and control, each mine should be treated as a distinct mining company for the purpose of distribution of cars during periods of car shortage; and if any one of the mines countermands its order for cars on any particular day, its allottment should go back into the general supply of cars and be distributed among all the other mines on the carrier's line, according to their respective ratings. McCaa Coal Co. v. C. & C. Ry. Co., 33 I. C. C. 128, 131.

(l) The contention that a coal company, operating mines having no connection with one another except that they are under joint management, can allot to one of its mines all the cars due it on a certain day, will not be entertained. The discrimination incident to such a system of distribution is too manifest to require discussion. McCaa Coal Co. v. C. & C. Ry. Co., 33 I. C. C. 128, 131.

(m) Cars of coal which are partially loaded and remain over until the next day to be fully loaded should be charged against the mine loading the same, as if such cars were empty. An empty car held over counts as a penalty on the next day's allottment, and no good reason appears for changing this rule with respect to partially loaded cars. McCaa Coal Co. v. C. & C. Ry. Co., 33 I. C. C. 128, 132.

§15. Railway Fuel Cars.

(a) Where the carrier takes the entire output of a mine, it has been considered permissible to deduct the number of cars delivered to that mine from the available supply before prorating among mines shipping commercial coal, or both commercial and railroad coal. In some cases only open cars are counted against mine ratings; that is, if an operator has facilities for loading box cars, such cars of that class as he receives are in addition to his rating proportion. This plan is not in accordance with the Commission's rulings. Coal and Oil Investigation, 31 I. C. C. 193, 218.

(b) If fair and correct methods of determining the relative capacities of mines are used, this may afford a reasonably equitable basis for rating. Coal and Oil Investigation, 31 I. C. C. 193, 218.

(c) Factor in rating of mine was number of tons of coal shipped during the two years prior to date when rating was made, which resulted in a rating much below its commercial capacity. Reparation awarded. National Coal Co. v. B. & O. R. R. Co., Unrep. Op. A-617.

§17. Tank Cars.

See Demurrage, §10 (a).

§20. Car Famine.

(a) There can be no objection to a railroad furnishing cars to its shippers, securing them by lease from other lines if proper compensation is paid for the use of the cars, except in times of car shortage. At such times it is the duty of

each carrier to distribute its entire equipment to its shippers before disposing of the same by sale, lease, or otherwise. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 506.

(b) Complainants having notice of the detention of their cars at a certain point must use reasonable diligence to avid or minimize loss likely to result therefrom. Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 657.

(c) Intervener, an association of cooperatively run elevators, protested that the carriers' equipment was inadequate at times to properly handle the grain traffic of the State of Iowa, resulting in car shortage; that their cars were not distributed equally between stations, and that they unduly discriminated in the furnishing of cars between shippers or elevators at stations, and prayed the promulgation of rules under which cars should be apportioned in times of shortage according to past performance in shipments tendered by individual shippers or elevators over a given period. No rule existed for the distribution of grain cars in times of car scarcity, but the general practice of carriers was to distribute cars equally among shippers at the station, according to demand and grain ready for shipment, combined with the effort to keep the business of all shippers moving. For instance, where one elevator was full, and another not, the effort was to open the closed elevator by a reasonable preference in car supply. HELD, that cars should be distributed as nearly as practicable in accordance with the grain offered for shipment day by day, regardless of past performances and regardless of whether such grain is in elevators or elsewhere; that the situation is one which cannot be dealt with by fixed. arbitrary and inelastic regulations; and that the decision must rest in the exercise of a sound discretion in the station agent as to what is right and proper in each case. The grain traffic is not analogous to that of coal, because the grain is not already bought and in the elevator, but is constantly purchased from the farmers contiguous to the station, under the competitive bids of the local buyers; therefore the volume of traffic to be offered cannot be ascertained as in the case of coal mines, where coal is in the mines in known ownership, ready to be moved as fast as it can be mined and loaded. Cars for grain should be distributed as nearly as practicable in accordance with the grain offered for shipment day by day, and ready for loading within the free time after the demurrage rules, regardless of past performances and regardless of whether such grain is in elevators or elsewhere. Complaint dismissed. Railroad Commissioners of Iowa v. C. R. I. & P. R. R. Co., 29 I. C. C. 396.

(d) In time of car shortage, cars should be distributed as nearly as practicable in accordance with the grain offered for shipment day by day and ready for loading within the free time under the demurrage rules, regardless of past performance and regardless of whether such grain is in elevators or elsewhere. Rules applicable to coal do not apply to grain. Railroad Commissioners of Iowa v. C. R. I. & P. Ry. Co., 29 I. C. C. 396, 404.

(e) Car shortage inevitable under prevailing conditions; common during winter. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 624.

(f) Car shortage was caused by snow blockades, but no cause for undue discrimination for the defendant to prefer branch-line points to main-line points in supplying cars for live stock shipments. Wright v. C. & N. W. Ry. Co., Unrep. Op. A451.

(g) Purpose in fixing ratings for mines is to determine the basis upon which each shall share in the equipment available during periods of car shortage. Coal and Oil Investigation, 31 I. C. C., 193, 217.

(h) Though equipment be inadequate, there would seem to be no reason why mines on Belt should not share with complainants the burden of car shortage. Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C., 660, 663.

§21½. Shippers on Branch Lines.

(a) Car shortage was caused by snow blockade but no cause for undue discrimination for the defendant to prefer branch-line points to main-line points in supplying cars for live-stock shipments. Wright v. C. & N. W. Ry. Co., Unrep. Op. A451.

B. Rating of Mines.

§21¾. In General.

(a) Parties being unable to agree on a mine rating to be used as basis for

distribution of coal cars pursuant to the Commission's holding in 30 I. C. C. 531, a supplemental hearing was had. The coal companies interested submitted a statement satisfactory to all parties under which the number of cars to which each was entitled was to be based on the number of tons mined in a 10-hour day multiplied by the number of days during which the mine was worked, readjustment to be made quarterly. HELD, that the agreement being satisfactory to all concerned, be accepted by the Commission as a compliance with its original finding. McCaa Coal Co. v. C. & C. Ry., 33 I. C. C. 128.

§23. Commercial Plus Physical Capacity.

(a) Carriers should apportion cars upon basis ascertained in advance, and take into account not only physical capacity of each mine to make shipments, but also the commercial capacity of each mine to find a market for its coal. No discrimination against shipper whose commercial misfortunes operated to reduce their ratings. National Coal Co. v. B. & O. R. R. Co., 28 I. C. C. 442, 444.

(b) Complainants, operating coal mines on the line of the C. & C. Ry. Co. between Charleston and Elkins, W. Va., attacked defendant's car distribution rule under which during car shortage periods the mine rate was arrived at by adding to the estimated physical capacity the commercial capacity taken for the 12-months' prior period, dividing the result by two, with the provision that if the result is greater than the tipple or haulage capacity the lesser of these shall be the basis of the mine rate, and alleged that such practice was discriminatory against them and in favor of the Davis Colliery Co., owned and controlled by substantially the same interests as the railroad, and asked reparation. Physical capacity is calculated solely upon the number of working places in a mine and average capacity of each miner as reported by the mine, even though such working places may never have been worked or are exhausted. Whether machines are used in, thickness of seam, and number of men who could be housed, are not considered. This system resulted in arbitrary inflation of mine ratings. The physical capacity figures of the Davis mines were purposely inflated, and, to keep in line complainants were obliged to do the same thing. Defendant's rule required that the entire allotment of cars must be ordered if any were wanted, and that enough cars would be supplied where possible to make at least a day's run for a mine. Under these rules defendant dumped more cars on complainants in one day than they could possibly load, those not loaded going over to penalize them on the next day's supply and were put against their full allotment for that day, the remainder of the full allotment, however, being furnished; thus the allotments to their mines were exhausted in a few days, and the mine remained idle for the balance of the month. Whereupon, the miners would desert the mine, paralyzing its activity for the balance of the car shortage period. On the other hand the Davis mines were furnished with cars by 7 a. m., at which hour the miners insist on beginning work, while complainant's deliveries were frequently made late in the afternoon. HELD, that the method pursued permits of discrimination; and defendant must distribute cars hereafter on basis figured on average shipment per days worked by the mines located on its line taken for a two-year period prior to Jan. 1, 1913. Cars must be supplied to all operators as of 7 a. m. of the day charged. Where the mine s percentage is not high enough to entitle it to one car in the distribution for the day its order shall go over to the next, and such mine shall be supplied before any other on the next day's distribution. An arbitrary allotment bearing due proportion to operating mines of similar proportions, shall be made on request to new mines and mines which did not operate during such period. McCaa Coal Co. v. C. & C. Ry. C., 30 I. C. C. 531.

§24. Idle-Hour System.

(a) In Colorado Coal Traffic Assn. v. D. & R. G. R. R. Co., 23 I. C. C. 458, the Commission, while not undertaking to formulate rules for car distribution, directed respondent carriers to publish such rules and maintain proper records showing the results thereof. In compliance therewith, the C. & S. Ry., and D. & R. G. R. R. adopted the rules for car distribution to which exception is taken. These rules distribute cars on what is known as the "idle-hour system," the aim being that all mines affected shall work the same number of hours per calendar week. Reports are made weekly to the carriers, showing the time lost, if any,

through failure of car supply; and where it appears that any mine has more idle hours than any other mine, the basis of distribution is so modified as to equalize the number of idle hours during the ensuing week. The C. & S. E. R. R., about 6½ miles long, extends west from Barnes, on the D. & R. G. R. R. across the C. & S. Ry. at Ludlow, to the mines of the Victor-American Fuel Co., and all its stock is owned by the latter company. It has through routes and joint rates with the D. & R. G. R. R. and the C. & S. Ry., and their connections, receiving out of such joint rates 10c per ton as its switching earnings on shipments of coal by its proprietary company, and has no other tonnage. The C. & S. E. R. R. reaches Trinidad, Colo., over the rails of the C. & S. Ry., thus giving the C. & S. E. R. R. connection with the A. T. & S. F. Ry., the trackage arrangement stipulating, however, that the C. & S. E. R. R. shall not engage in business at any point between Ludlow and Trinidad. The C. & S. E. R. R. owns no coal cars and does not undertake to furnish cars to shippers on its line, that duty being assumed by the C. & S. Ry. and D. & R. G. R. R., the mines of the Victor-American Fuel Co. being viewed for car distribution purposes as on their lines. Under the trackage agreement, the C. & S. E. R. R. is able to secure empty coal cars of the A. T. & S. F. Ry. at Trinidad, which it allots entirely to the mines of its proprietary company. In times of car shortage the D. & R. G. and C. S. R. Rs. forbid the loading of their cars to points on the A. T. & S. F. Lines, but the cars of the latter must be loaded to such points to be returned to their owners. Thus it is often impossible for shippers to secure cars at such points on the A. T. & S. F. lines at the very time when the Victor-American Fuel Co. is amply provided with cars belonging to that line. The C. & S. E. Ry. claims to be a lateral branch of the three other lines, and as such released from that portion of section 1 which makes it the duty of a carrier to furnish transportation upon reasonable request. HELD, that the C. & S. E. R. R., so long as it is to be considered as a common carrier, has the duty of furnishing cars for shipments between points on its line if there are any such shipments. Its obligation to furnish cars for shipments to points upon the lines of its connections is joint with such connections, and it cannot be relieved of its portion of such joint liability by any contract with such connections. Its contract with the C. & S. Ry. causes an undue discrimination against petitioners in the matter of car supply. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502.

§26. Physical Capacity Less Railway Fuel.

(a) Car distribution based upon the element of physical capacity is wholly unsatisfactory and works injustice. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 536.

(b) The best that can be said for calculations as to physical capacity is that they are arbitrary inflations, which furnish nothing real or tangible. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 535.

(c) A system of car distribution based on physical capacity, which takes into account only the reported number of working places available in the mine, the number of miners that could be worked to advantage, and the average capacity of each miner, ignoring the data as to whether or not machines are used in the mine and thickness of seam, will permit of arbitrary inflations, enabling the carrier to unjustly discriminate. McCaa Coal Co. v. C. & C. Ry Co., 30 I. C. C. 531, 534.

(d) Distribution of coal cars based on the element of physical capacity is wholly unsatisfactory and works injustice. In some cases the best basis for distribution is the proportionate necessities of the mines, as indicated by past performances, extending over periods of car shortage as well as periods of free distribution. No basis of distribution can be absolutely precise. But it is not necessary to imagine anything or deal in speculations or possibilities. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 536.

(e) Complainant assailed defendants' system of distributing coal cars during car shortage periods by adding to the estimated physical capacity the commercial capacity taken for the 12-month prior period, dividing the result by two, provided that if the resultant was greater than the tipple or haulage capacity, the lesser of these was to be taken as the basis of the mine rate, as discriminatory. In estimating the physical capacity a mine was supposed to have two miners work-

ing, with a capacity per miner as reported, in each working place reported, even though tracks may not have been laid into them or they had been exhausted and the matters of whether machines were used in the mine, the thickness of seam were not considered. The rules requiring that the entire daily allotment of cars must be ordered if any were wanted, was so enforced against complainants that their entire monthly allotments were exhausted in a few days, while not enforced as to other coal companies controlled by defendant, which were thus enabled to run continuously. Miners would not stay at mines that did not run regularly. Cars were often delivered to complainants late in the afternoon. HELD, (1) that distribution of cars based on physical capacity worked injustice; (2) that the best basis for distribution was the proportionate necessities of the mines, as indicated by past performances, extending over periods of car shortage as well as periods of free distribution; (3) that defendant should thereafter base distribution on average shipment per days worked by mines located on its line taken for a 2-year period prior to Jan. 1, 1913; (4) that cars must be supplied all operators as of 7 a. m. of the day charged. Reparation denied. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531.

IV. CONTRACTS FOR CAR SUPPLY.

§28. In General.

(a) A carrier's obligation to furnish cars for shipments to points upon the lines of its connections is joint with the latter, and contracts with them cannot relieve it of its portion of such joint liability. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 506.

(b) The rights and duties of carriers in the apportionment of car supply must be determined by the Act to Regulate Commerce, and not by any contract they may choose to make. That portion of section 1 which makes it the duty of every carrier to provide transportation, including cars, upon reasonable request, must be read in conection with that portion which deals with switch connections between common carriers and lateral branch lines. A lateral branch line is entitled to a switch connection without regard to its status as a plant facility or common carrier. The Act provides that a lateral branch line shall be entitled to a switch connection with a common carrier which is itself a lateral branch line of some other common carrier. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505.

(c) Demand for refrigerator cars has exceeded supply. Rental Charges for Insulated Cars, 31 I. C. C., 255, 256.

(d) Per diem accrues while foreign car is being cleaned. New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C., 609, 611.

(e) Per diem which one carrier pays to another is a fixed charge per day for all days that a car is on a foreign line. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 690, 693.

V. DUTY TO TRANSPORT CARS.

See Transportation, II.

§29. In General.

(a) Carrier may secure the economical use of its equipment. Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349, 350.

(b) Effect of general business depression upon volume of traffic indicated by a comparative statement giving number of idle cars or car surplus. Five Per Cent Case, 31 I. C. C., 351, 424.

§30. Interchange of Cars.

See Interchange of Traffic.

(a) Shipper not concerned with arrangements between two carriers for furnishing equipment under through rates offered via different gateways. Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C., 142, 143.

(b) Connecting carriers should provide reasonable and equal facilities for interchange of freight. Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C., 660, 662.

§32¼. Quarantine Regulations.

(a) Complainants attacked defendant's tariff provisions establishing a charge of $2.50 per car for cleaning and disinfecting cars, as required by government regulations, as unreasonable and unduly discriminatory against New Orleans, La. Similar rules as to stock cars coming from quarantined districts were maintained by all carries operating in the Southern Classification territory. Florida, Georgia, Alabama, Mississippi and Louisiana were within the federal Texas fever quarantine area; and the

federal regulations required the cleansing and disinfecting of cars used for transportation of cattle within the transportation area before such cars were permitted to move to points outside the disinfected area. The shipments of cattle to New Orleans were principally from the other states named. No charge was imposed by carriers at many northern destinations, but it appeared that the competition of carriers was much keener at those points. HELD, that the charge of $2.50 was reasonable where proper, but that it could not properly be applied to cars which had moved between points and via lines wholly within tne quarantined area. New Orleans Live Stock Exchange v. L. & N. R. R. C., 31 I. C. C. 609.

(b) The Commission has no jurisdiction of a proceeding involving the justice of a charge for cleansing and disinfecting cattle cars which have moved wholly within the limits of one state, even though that state be included in a federal quarantine area. New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 612

(c) Such cars as move interstate wholly within a federal quarantine area are not subject to a cleaning and disinfecting charge imposed by carriers under the regulations promulgated by the U. S. Department of Agriculture. New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 610.

VI. REMEDIES AND DAMAGES.

See Actions at Law; Reparation.

§32½. In General.

(a) Factor in rating of mine resulted in unjust discrimination in distribution of coal cars in times of car shortage. Reparation awarded. National Coal Co. v. B. & O. R. R., Unrep. Op. A-617.

(b) Damages awarded where carrier refused to furnish its own cars unless shipper would agree to route shipments via Portland thereby giving carrier a much longer haul. Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C., 142.

§33. Action at Law.

See Actions at Law.

(a) It was obvious that the absolute refusal of a carrier to furnish a shipper cars would be a violation requiring no administrative determination and of which the courts could take primary jurisdiction. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52.

(b) The fact that a shipper has not only filed his complaint with the Commission and secured a ruling or order declaring a carrier's practice relative to assignment of coal cars to be discriminatory, but has also been awarded reparation, will not bar action by the shipper under state law for damages for discrimination, where the discrimination relates to coal sold f. o. b. cars at the mines, and therefore not subject to interstate commerce regulation. Clark Bros. Coal Mining Co. v. Pennsylvania Ry. (Pa., 1913), 88 Atl. 754, 760.

(c) An action for damages resulting from failure of the carrier to furnish cars for the shipment of freight within a reasonable time after the date agreed upon between the shipper and the station agent of the carrier, is not prohibited by the Interstate Commerce Act, as amended June 29, 1906. C. R. I. & P. Ry. Co. v. Beatty (Okla. 1914), 141 Pac. 442.

CIRCUITIOUS ROUTE

See Evidence, §13 (1), (f), §14 (1), (d); Long and Short Hauls, §5 (g), (n), §12 (2), (c); Proportional Rates, II (h); Routing and Misrouting, §2 (g), (i), (j), (l), §4; Through Routes and Joint Rates, §6, §11 (2), (l).

CLAIMS.

I. WHEN STATUTE OF LIMITATIONS RUNS.
- §1. In general.
- §2. Claims accruing before Aug. 28, 1906.
- §3. Date of delivery of shipment.
- §4. Date of payment of charges.
- §5. Date of amending claim.
- §5½. After notice to file formal complaint.

II. INFORMAL COMPLAINTS.
- §6. Effect of informal letter.
- §7. Necessity of formal complaint.
- §8. Requisites of informal complaint.

III. PRESENTATION TO CARRIERS.
- §9. Advisability.
- §10. Regulations.
- §11. Penalties for non-payment.

CROSS REFERENCES

See Loss and Damage; Passenger Fares and Facilities, IV.

I. WHEN STATUTE OF LIMITATIONS RUNS.

§1. In General.

See Classification, §1 (c); Loss and Damage, §13½; Reparation, §7.

(a) While every person who has paid an advanced rate declared to be unreasonable can take advantage of the finding that the advance was unreasonable, he is obliged to assert his claim within the time fixed by law. When the overcharge was collected, a cause of action at once arose and the shipper at once had the right to file a complaint, or to intervene in proceedings instituted by others. If he failed to take either of those steps, and there was a finding of unreasonableness in the proceedings begun by others, he could, if in time, present his claim, and wait the result of the litigation over the validity of any order made at the instance of those parties. If it was ultimately sustained by the court as valid, he would then be in position to obtain reparation from the Commission—or a judgment from a court of competent jurisdiction, on a claim that had been seasonably presented. But neither proceedings begun by other shippers, nor findings of unreasonableness and orders issued thereon by the Commission would save the rights of those who disregarded the requirements of the Hepburn Amendment, that, "all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after, provided that claims accrued prior to the pasage of this act may be presented within one year." 34 Stat. at L. 500. Chap. 3591, Comp. Stat. 1913, sec. 8584. In the present case the overcharges were made prior to August, 1904. The present suit was brought May 9, 1909, less than two years after the validity of the Commission's order was sustained by the Supreme Court, but more than one year after the passage of the Hepburn Amendment, and more than four years after the plaintiff's cause of action arose. Therefore the plaintiff's right of action is barred by the Interstate Commerce Act. A. J. Philips Co. v. G. T. W. R. Co., 35 Sup. Ct., 444, 445.

(b) The filing of each claim is, in essence, an independent proceeding on the part of that complainant, and the statute of limitation must run from the date of the filing in each individual case. In re Advances on Live Stock, 28 I. C. C. 332. 335.

(c) No recovery can be had unless claim be filed with the Commission within two years. This must import a filing of the claim by some person entitled either in law or in equity to prosecute and recover on account of that claim. It is possible that if the title were equitable it might afterwards be perfected, but clearly the filing of the claim by an entire stranger cannot operate to defeat the running of the statute. In this case, the complainant had no legal or equitable interest in the prosecution of this claim, and its action could in no way inure to the benefit of the real party in interest. Therefore, while consignees who had paid the freight might become parties to a proceeding in which their consignor was endeavoring to recover unreasonable freight charges. The complaint must be regarded as filed as of the date when they first appear upon the record, and if more than two years has elapsed since the freight was paid, they are not entitled to reparation, and the filing of the complaint by their consignor, although within two years, does not protect them. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 395.

(d) No recovery can be had unless the claim be filed with the Commission within two years, by some person entitled either by law or equity to prosecute and recover on account thereof; and the filing of a claim by an entire stranger thereto will not operate to defeat the running of the statute. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 395.

(d) Complainants and defendants believed that complainants had been overcharged, thereupon defendants made a refund to complainants. Subsequently defendants collected it back from the complainants, thereupon complainants instituted this proceeding. HELD, complainants barred by the statute. Miller Brothers v. O. S. L. R. R. Co., Unrep. Op. A478.

(e) The filing of a claim by a party having no legal or equitable interest in that claim will not interrupt the running

of the statute. Tennessee Copper Co. v. L. & N. R. R. Co., Unrep. Op. A523.

(f) The filing of an informal complaint by a stranger to the record in the formal case does not stop the running of the statute. Humphreys-Godwin Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-598.

(g) Lower rate established subsequent to movement of shipment. Reparation denied because of failure of complainant to file claim within two-year period. Humphreys-Godwin Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-598.

§2. Claims Accruing Before Aug. 28, 1906.

(a) The provision of section 16, as amended June 29, 1906, that all complaints for recovery of damages shall be filed within two years, "provided that claims accruing prior to the passage of the act may be presented within 1 year," applies to only claims which accrued more than 2 years prior to the passage of the amendment. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 802.

§3. Date of Delivery of Shipment.

(a) Statutory period starts from the time the shipment is delivered, and the fact that the parties may have been mistaken as to the rate lawfully applicable does not alter the situation. Miller Brothers v. O. S. L. R. R. Co., Unrep. Op. A478.

§5½. After Notice to File Formal Complaint.

(a) Informal complaint filed Oct. 12, 1911; Commission notified complainant that claim could not be adjusted informally on Nov. 27, 1911; formal petition filed Sept. 27, 1913. HELD, barred by the statute, because failing to take any action within a reasonable time after notification of the Commission. Pence & Brother v. C. & O. Ry. Co., Unrep. Op. A476.

(b) Reasonable time in which to file formal complaint after notification by the Commission that claim is of such a nature that it cannot be determined informally will not exceed six months, provided of course that the filing of the formal complaint is subsequent to the two-year period of limitation. Palen & Burns v. L. V. R. R. Co., Unrep. Op. A479.

II. INFORMAL COMPLAINTS.

See Reparation, §22.

§6. Effect of Informal Letter.

(a) Complainant who was advised by Commission that his claim, presented informally, would be considered on formal docket, took no further action for five years, when he filed his complaint. HELD, barred under section 16. Dillon Coal & Transfer Co. v. O. S. L. R. R. Co., 28 I. C. C., 91.

(b) Running of statute not barred by presentation of informal complaint, where complainant failed to present formal complaint until five years later. Dillon Coal & Transfer Co. v. P. R. R. Co., 28 I. C. C., 91.

(c) General allegation in letter showing the point of origin, destination, etc., sufficient to constitute filing. In re Advances on Livestock, 28 I. C. C., 332, 335.

(d) The filing of each claim is, in essence, an independent proceeding on the part of that complainant, and the statute of limitations must run from the date ot the filing in each individual case. In re Advances on Livestock, 28 I. C. C., 332, 335.

(e) The Commission holds that the filing of an informal complaint covering a particular shipment is sufficient to interrupt the running of the statute, even though the formal complaint upon which an order is subsequently based is not filed for more than two years after the delivery of the shipment. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 394.

(f) The filing of an informal complaint by a stranger to the record in the formal case does not stop the running of the statute. Humphreys-Godwin Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-598.

(g) Letter and statement filed with Commission to stay limitation of the Act. Reparation awarded on hardwood lumber from Cincinnati, Ohio to Pacific Coast Terminals, Farrin Lumber Co. v. A. T. & S. F. Ry. Co. Unrep. Op. A-685.

III. PRESENTATION TO CARRIERS.

See Loss and Damage, §2.

§11. Penalties for Non-Payment.

(a) The effect of the Carmack Amendment is not such as to prevent a consignee from recovering a penalty provid-

ing by a state statute for failure on the part of the carrier to adjust a claim for loss of goods within 40 days after such claim has been filed with the carrier's agent. Stukes v. Southern Expr. Co. (S. C. 1914), 80 S. E. 612.

CLASS RATES.

I. TARIFFS AND PUBLICATION.
§1. In general.
II. REASONABLENESS AND DISCRIMINATION.
§2. In general.

CROSS REFERENCES

See Advanced Rates, §5 (2), (t); Basing Points and Lines, §1 (r); Classification, V; Commodity Rates, §2; Discrimination, §13 (c); Evidence, §1 (b), §13 (1), (d), (ss), §14 (5), (k); Facilities and privileges, §14½ (b); Reasonableness of Rates, §7½ (a); Tap Lines, §6 (b); Through Routes and Joint Rates, §11 (2), (f).

II. REASONABLENESS AND DISCRIMINATION.

§2. In General.

See Advanced Rates, §17 (i).

(a) Class rates from Atlantic Seaboard to Chicago and St. Louis are reasonably low, and are product of acute competitive conditions. Boston Chamber of Commerce v. A., T. & S. F. Ry. Co., 28 I. C. C. 230, 233.

(b) It is difficult to see why, in a scientific schedule, Class A and Class 5 should be the same. The object of creating different classes is to apply different rates. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 563, 566.

(c) Class rates to and from upper crossings, westbound and eastbound, unreasonable and discriminatory as compared with lower rates enjoyed by lower crossings, Mississippi River Case, 29 I. C. C. 47. 58.

(d) Mileage scale applicable to class rates prescribed by Commission with fixing uniform relation between classes. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 563, 565.

(e) To apply the same percentage relation between class rates in every part of the country would create confusion and discrimination instead of securing uniformity and equal treatment. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 563, 565.

(f) Class rates prescribed which preserved relation between the different classes at all distances. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 563, 566.

(g) Advances in rates on beer and returned empty containers, in carloads, between Jacksonville and Palm Beach and Miami, Fla., applicable to shipments from Chattanooga, Tenn., justified in part. Reasonable rates prescribed. Chattanooga Brewing Co. v. M. C. & St. L. Ry. Co., Unrep. Op. A-179.

(h) Class rate applicable to plows from Coldwater, Miss., to Memphis, Tenn., higher than commodity rate to Memphis from Atlanta and other points. No witness, however, introduced to testify as to the conditions under which rates to Memphis were established. Evidence in record insufficient to warrant finding of rate unreasonable. Orgill Bros. & Co. v. I. C. C. R. R. Co., Unrep. Op. A-209.

(i) Complainants attacked the class rates from points in eastern and New England territory to Washington, D. C., and from Washington to Carolina and other Southern points, the former as unreasonable and discriminatory as compared with rates to Baltimore, Md., Richmond, Va., and other points, and the latter as exceeding the aggregate of intermediate rates. On September 1, 1913, store-door delivery at Washington, accorded on the first four classes of freight from defined points of origin, was withdrawn as a result of the order of the Commission in Washington, D. C., Store-door Delivery, 27 I. C. C. 347. The cost of such service to carriers was about 5c per 100 lbs. No change was made in the rates, either when the service was installed or when it was discontinued. Rates to Washington from New York are 37c, 31c, 26c, 20c, 15.5c and 13c, and from Boston 45c, 39c, 34c, 27c, 22c and 20c. From Boston the spread between the third and fourth classes is 7c, and between the fourth and fifth classes, 5c; from New York, between the third and fourth classes, 6c, and between the fourth and fifth classes 4½c. New York-Chicago rates are 75c, 65c, 50c, 35c, 30c and 25c; that is, the first-class rate is 3 times the

amount of the sixth-class rate. This was considerably greater than the spread in the rates to Washington from the defined points of origin, but less than the spread in rates from Pittsburgh, Scranton and Altoona, Pa., and other points whose freight was not entitled to store-door delivery. Prior to Sept. 1, 1913, fast freight service between Washington and Baltimore, including store-door delivery, was on a scale from 22c to 13c, while freight not accorded this privilege was on a scale of from 15c to 7c. Class rates from Boston to Richmond are 45c, 39c, 34c, 30c, 25c and 22c, and to Washington, 45c, 39c, 34c, 27c, 22c and 20c.; from New York to Richmond 37c, 32c, 26c, 23c, 17c, 14c, and to Washington, 37c, 31c, 26c, 20c, 15.5c and 13c; and from New Haven to Richmond, 45c, 39c, 34c, 30c, 25c and 22c, and to Washington 45c, 39c, 34c, 27c, 22c and 20c. The distance from northeastern points to Washington is 116 miles less than to Richmond. Rates from Bath, Sherbrooke and Brunswick to Washington are 57c, 48c, 40c, 30c, 25c and 21.5c, and to Richmond, 65c, 55c, 45c, 35c, 30c and 25c. Many articles taking higher rates to Washington than to Richmond, owing to the former being in Official and the latter in Southern Classification territory, carriers applied for relief from the long-and-short-haul rule. Distance by water from New York to Richmond is 80 miles less than to Washington, and the water rates to Richmond and Washington are the same, being on a scale of 32c to 12c. The rail rates to those points are certain differentials over the water rates, varying from 5c first class to 2c sixth class. Rates from Washington to the southeast are in many instances higher than the aggregates of intermediate rates based on Alexandria, resulting in fourth section applications by southern carriers. HELD, that (1) following Merchants' and Mfrs'. Assn. v. B. & O. R. R. Co., 30 I. C. C. 388, respondents are warranted in their withdrawal of store-door delivery at Washington, D. C.; (2) that class rates from defined Eastern and New England territories are not shown to be unreasonable; (3) that it not appearing that water competition is enough stronger, if stronger at all, than at Washington, to justify a difference in all-rail rates in favor of Richmond, the fourth section application for leave to continue lower rates to Richmond is denied; (4) that class rates from Washington to the Carolinas and other southeastern territory are unlawful to the extent they exceed the aggregates of the intermediates; proceedings held open to await effective readjustment of such rates; (5) reparation denied. Chamber of Commerce, Washington. D. C., v. B. & O. R. R. Co., 30 I. C. C. 446.

(j) Complainant assailed the Boston-Washington rates of 45c, 39c, 34c, 27c, 22c and 20c for 446 miles; the New York-Washington rates of 37c, 31c, 26c, 20c, 15½c and 13c for 228 miles; and the Philadelphia-Washington rates of 28c, 25c, 20c, 16c, 13c and 11c for 135 miles, as unreasonable and discriminatory. From points named and other Eastern and New England points, carriers had for many years given store-door delivery on the first four classes at Washington and on the first three at Baltimore. The cost of the service averaged about 5c per 100 lbs. In Washington, D. C., Store-door Delivery, 27 I. C. C. 347, the Commission held that to discontinue the service at Washington while maintaining it at Baltimore would cause discrimination, and to comply with its order the carriers withdrew the service at both points on Sept. 1, 1913. Nothing in prior adjustments of rates indicates that store-door delivery was provided for. The spread between the present rates of the fourth and fifth classes from Boston, New York and Philadelphia is, respectively, 5c, 4½c and 3c. As to all classes the average spread from Boston is 5c, from New York 4.8c, and from Philadelphia 3.4c. New York-Chicago rates are 75c, 65c, 50c, 35c, 30c and 25c; that is, the first-class rate is three times the sixth-class rate. From Boston and New York the spread between the third and fourth classes are 7c and 6c, respectively, while from Pittsburgh and Scranton, Pa., and certain other points as to which store-door delivery is not accorded, the spread is considerably greater. Prior to Sept. 1, 1913, there were two scales in effect between Baltimore and Washington; 22c to 13c where there was store-door delivery, and 15c to 7c where there was not. Rates to Washington are made by adding the usual differentials, Washington over Baltimore. HELD, that the existing class rates from Boston, New York and Philadelphia to Washington are neither unreasonable nor discriminatory. Complaint dismissed. Judd & Detweiler v. B. & O. R. R. Co., 30 I. C. C. 455.

(k) Complainant attacked the class rates on rice from Memphis, Tenn., to

the Ohio River and beyond, as unreasonable and discriminatory compared with commodity rates on rice from Louisiana, Texas and Arkansas milling points, and prayed for establishment of rates from Memphis lower than those from New Orleans, La., by 9 and 5c on clean and brewer's rice, respectively. Brewer's rice is worth about 1⅝c per pound; clean rice from 2½ to 6c. It takes 162 pounds of rough rice to produce 100 pounds of clean rice. Rates from New Orleans, the largest market and milling point, to Ohio River crossings, were made to meet water competition, and higher rates apply to intermediate points on the rail lines. With development of the industry in Louisiana, Texas and Arkansas rates were made with relation to New Orleans so that rates from milling points in those states are also lower to the crossings than to intermediate points. The carriers were willing to establish from Memphis to the crossings and points beyond, rates on clean rice lower by 5c and on brewer's rice by from 1 to 3c per 100 pounds, than the current rates from New Orleans, La., but asked authority to do so without regard to increase of discrimination against intermediate points. The rates proposed by defendants on brewer's rice from Memphis, were less than current rates from New Orleans by 1c to Cincinnati, Louisville and St. Louis, and by 3c to Cairo and Chicago. Nearly two-thirds of the rice milled at New Orleans comes from Louisiana and less than one-fourth from Arkansas. Average rates from Louisiana points to New Orleans are 13c by boat and 11.3c by rail; and the average rate on all rice received at New Orleans is 13.8c. The average rate on rice shipped to Memphis for milling is 12.8c. Much rice is brought to the Arkansas mills by wagon, on the remainder the freight rates ranging from 3.38 to 5.4c. The rate on clean rice from New Orleans to Memphis is 10c. New Orleans and other Louisiana mills enjoy milling-in-transit and reconsigning privileges, at a charge of 2c per 100 pounds on outbound tonnage of clean rice in the former case, and 1c on inbound rough rice in the latter case. Memphis is 396 miles north of New Orleans but the present rate adjustment is the result of competition between carriers and markets and not governed appreciably by relative distances to points of consumption. Rates on clean rice to Ohio River crossings and beyond are less from New Orleans by 10c and from Arkansas mills by 5c than from other Louisiana milling points. Under the readjustment proposed by defendants, rates from Memphis lower by 5c on clean and by 1 to 3c on brewers' rice than New Orleans rates, Memphis would have rates lower than the Arkansas mills by 10c to Ohio River points and points in Central Freight Asso. territory by 5c to Chicago, and by 4c to St. Louis. HELD, that the present adjustment of rates subjects Memphis to undue disadvantage, and rates therefrom should be lower than those from New Orleans by not less than the amounts proposed by defendants. In view, however, of the great disparity between such proposed rates and present rates to intermediate points, authority will not be granted to establish the former without regard to the increase of discrimination. Memphis Freight Bureau v. I. C. C. R. R. Co., 30 I. C. C. 471.

(l) Double first-class rate on thermos bottles not found unreasonable. Mogenson-Wells Co. v. E. R. R. Co., Unrep. Op. A419.

(m) If no commodity rate in effect defendant would be required to establish a second-class rate on peas and beans. Memphis Freight Bureau v. U. S. E. Co., Unrep. Op. A424.

(n) First-class rate on weeder blades unreasonable in so much as it exceeds the third-class rate. Mitchell, Lewis & Staver Co. v. S. P. Co., Unrep. Op. A439.

(o) Double first-class rate on mimeographs and neostyles from Chicago, Ill., to Portland, Ore., unreasonable in as much as it exceeds the rate one-and-one-half times the first class. Gill Co. v. O.-W. R. R. & N. Co., Unrep. Op. A444.

(p) Double first-class rate on packages of tobacco because lead seals were used instead of metal ones found unreasonable. Cowen Heineberg Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A458.

(q) Tuto and rexo horns compared with other automobile horns and the present double first-class rate not found unreasonable. Dean Electric Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A464.

(r) First-class rate not found unreasonable on cotton yarn or "wicking." Schermerhorn Brothers Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. A467.

(s) Complainant attacked the fifth class rate of 4c per 100 lbs. charged by the Penn. R. R. on cars loaded with pieces of fly-wheel switched at Harrisburg, Pa., from the point of interchange with the P. & R. Ry. to the plant of the consignee, as unreasonable, and asked reparation. Had the consignments been routed over any line other than the P. & R. Ry., the Penn. R. R. would have had a line haul and no switching charge would have been imposed. The distance from point of interchange to plant was about 1½ miles, but there being no facilities at the former point for making switching movements the delivery of cars required handling through two classification yards and a haul of four or five miles. HELD, following Merchants' & Manufacturers' Asso. v. Penn. R. R. Co., 23 I. C. C. 474, that the charge imposed was unreasonable to the extent that it exceeded 2c. Reparation awarded. Hoover, Owens, Reutschler Co. v. C. H. & D. Ry. Co., 31 I. C. C. 550.

(t) Complainant attacked the class rates from Wichita, Kan., to stations on the C. & O. W. Ry. in Oklahoma, and the commodity rates on grain, seeds and broom corn between the same points, as unreasonable and discriminatory in favor of shippers at St. Louis and Kansas City, Mo., Oklahoma City, Okla., and other centers. The C. & O. W. R. R. extending from Clinton, Okla., 51 miles west to Strong City, connected with 3 carriers from Wichita at Clinton. Joint through class rates from Wichita to points on the C. & O. W. R. R. were based on the local from Wichita, restricted to one-line hauls, plus a 3c transfer charge at Clinton, and the local interstate distance rates to destination; while rates from Missouri River points were made without reference to the number of lines involved in the haul. A mileage scale of rates was in effect from Wichita and interior cities to Oklahoma points, commonly called the "Jobbers' Scale," restricted to one-line hauls, and was used in making rates to Clinton from Wichita. There was no single-line haul from Wichita to any C. & O. W. R. R. point except Clinton. A comparison of rates for hauls to the local points in question over more than one line gave the following results: To Stafford from Wichita the rates were 86c, 73c, 61c, 53c, 50c, 50c, 44c, 37½c 30c and 23½c for 204.6 miles, and from Kansas City $1.18, $1.01, 95c, 85c, 68c, 70c, 57c, 47c, 38c and 32c for 417.6 miles, and to Hammon from Wichita rates were 93c, 81c, 68c, 59c, 54c, 54c, 47c, 39½c 31c and 24½c for 227.2 miles, and from Kansas City $1.19, $1.03, 96c, 88c, 70c, 72c, 60c, 49c, 40c and 34c for 440.2 miles. Thus, though the average distance from Kansas City to destinations involved was about twice that from Wichita, joint rates from Wichita were from 70 to 85 per cent of those from Kansas City. Rates from Kansas City to C. & O. W. R. R. stations ranged from 3 to 6 cents above rates to Clinton, while those from Wichita were from 8½c to 37c higher. Defendant's proposed commodity rates on grain and seeds from Wichita relatively lower than rates from Kansas City, while rates on broomcorn from the two points were practically identical. HELD, that class rates from Wichita to points on the C. & O. W. R. R. should not exceed rates of the "jobbers" one-line haul scale for those distances plus differentials of 8c, 7c, 6c, 5c, 4c, 4c, 4c, 3c, 2c and 2c, for the two-line haul. Commodity rates found unreasonable and reasonable rates prescribed. Wichita Busi. Asso. v. C. & O. W. Ry. Co., 31 I. C. C. 323.

(u) Complainant attacked the class rates of the C. M. & St. P. Ry. from Minneapolis and St. Paul, Minn., to South Dakota and North Dakota points located on its Hastings & Dakota, James River and trans-Missouri divisions, as unreasonable and discriminatory. These rates were considerably higher than intrastate rates for like distances prescribed by the states of South Dakota, Minnesota and Iowa. Thus, from Minneapolis to Milbank, S. Dak., the rate was 57c for 190 miles, as compared with rates of 53.1c, 48.3c and 38.4c under the South Dakota, Minnesota and Iowa tariffs, respectively, for like distances; and from Minneapolis to Aberdeen, S. Dak., the rate was 77c for 288 miles, as compared with rates of 68.4c, 59c and 54.4c under the state tariffs for distances of 290 miles. To points on defendant's Rapid City, S. Dak., line much lower rates were applied, thus: to Worthing, S. Dak., the rate was 60c for 331 miles; to Alexandria, S. Dak., 72c for 387 miles, and to White Lake, S. Dak., 84c for 435 miles; but the Rapid City line intersects the lines of several carriers having more direct routes from Minneapolis. The rates from Minneapolis and St. Paul complained of average 45 per cent higher than rates for equal distances from Chicago and Milwaukee to points in Minne-

sota, Iowa and South Dakota. First class rates via the C. M. & St. P. Ry. to Milbank, S. Dak., from Minneapolis, Chicago, Milwaukee and Duluth are, respectively, 57c, 94c, 94c and 66c for distances of 190, 605, 519 and 341 miles, and to Mobridge, S. Dak., from the same points $1.05, $1.29, $1.29 and $1.17 for distances of 386, 800, 714 and 537 miles. Thus the rate from Minneapolis to Milbank is less than the rates from Chicago, Milwaukee and Duluth by 37c, 37c and 9c, while the distance is less by 515, 449 and 151 miles, respectively, and the rate from Minneapolis to Mobridge is less than the rates from Chicago, Milwaukee and Duluth by 24c, 24c and 12c, while the distance is also less by 515, 449 and 151 miles. While the distances from Chicago to the destinations in question are from 185 to 283 per cent greater than the distances from Minneapolis, Chicago rates exceed Minneapolis rates by from 129 to 175 per cent. Duluth distances exceed Minneapolis distances by from 131 to 179 per cent, while Duluth rates range from 100 to 120 per cent of Minneapolis rates; but Duluth distances are not short line distances, which are 58 miles less. The most direct route from Chicago to the territory of destination involved is via the twin cities, and the most direct all-rail route from the east to the twin cities is via Chicago. But while the first class rate from New York to Minneapolis exceeds that from New York to Chicago by 40c, and that from Pittsburgh to Minneapolis exceeds that from Pittsburgh to Chicago by 50c, Chicago rates to Dakota destinations involved in some cases exceed those from the twin cities by as little as 24c. The local rate Chicago to the twin cities is 60c. Chicago rates to points involved exceed rates from Minneapolis by 48.5c at Granite Falls, Minn., 37c at Milbank, S. Dak., 40c at Bristol, S. Dak., and 24c at Mobridge, S. Dak. To destinations on the transcontinental lines of the N. P., G. N. and M. St. P. & S. S. M. Rys., Chicago rates generally exceed twin city rates by the full local rate Chicago to Minneapolis. Rates via the C. & N. W. R. R. for an excess distance of 332 miles from Chicago exceed rates from Minneapolis to Marshall, Minn., by 39.6c first class, to Raymond, S. D., by 34c, and to Gettysburg, S. Dak., by 24c. Rates via the C. R. I. & P. R. R. from Chicago, for distances exceeding Minneapolis distances by 371 and 394 miles, respectively, to Watertown and Elkston, S. Dak., exceed the Minneapolis rates by 33 and 24c, respectively. Via the lake-and-rail route, rates from New York to the twin cities exceed lake-and-rail rates to Chicago by but 21c first class. In Re Class Rates to Watertown, S. Dak., 26 I. C. C. 635, the Commission approved an increase of from 88c to 96c in the rates from Chicago to Watertown; but rates via defendant's line from Chicago to Aberdeen, S. Dak., a competitive point, are $1.14. Under the rates in controversy during eleven months of 1913, 98,000,000 lbs. of less-than-carload freight moved from the twin cities to the destinations on the Hastings & Dakota division and 29,000,000 lbs. to North Dakota and South Dakota destinations as against 29,000,000 and 18,000,000 lbs. shipped to such destinations from Chicago. In some instances rates from Minneapolis to destinations involved increase in the movement westward greatly out of proportion with increase in distance. For instance, first class rates to Milbank, S. Dak., and Big Stone City, Minn., are 57c and 46.3c, respectively, for distances of 190 and 179 miles; or a spread of 10.7c for a difference of only 11 miles. From Minneapolis to Glencoe, Granite Falls and Appleton, Minn., and Summit, Bristol and James, S. Dak., the rates are 21.8c, 35.5c, 42.4c, 59c, 70c and 77c, yielding 8.55c, 5.87c, 5.40c, 5.54c 5.65c and 5.64c per ton-mile for distances of 51, 121, 157, 213, 248 and 273 miles. After crossing the Minnesota-South Dakota boundary, the revenue per ton-mile increases to 6c at Milbank, S. Dak., and remains higher than at Big Stone City to Tatanka, S. Dak., 259 miles from Big Stone City. The decline in per-ton-mile revenue from the high point at Milbank to the low point at Montline, N. Dak., of 4.76c is not uniform. HELD, that complainant has not proved undue discrimination in the rates from the twin cities to South Dakota points, as compared with those to the same points from competing markets, as to a certain extent carriers are justified in placing competitive markets upon an equal basis; but that the increase in rates to South Dakota and North Dakota points on defendant's transcontinental line should be more gradual. Rates prescribed, ranging from 52c for Class I to 10c for Class E for 200 miles up to $1.38 for Class I and 28c for Class E for 600 miles, the rates increasing 4c to 5c for every 20 miles on Class I, and 1c on Class E. Minneapolis Civic & Com-

mercial Asso. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663.

(v) Class rates on wire bag ties from New York, N. Y., to Gas and Independence, Kan., and Dewey, Okla., found unreasonable to the extent that they exceeded the commodity rates to the Mississippi River and second and fourth class rates beyond. United Kansas Portland Cement Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-552.

(w) Commodity rates ordinarily lower than class rates, and class rates therefore afford a reasonable test for measuring general level of commodity rates. 31 I. C. C., The Five Per Cent Case, 351, 401.

(x) Class and commodity rates may sometimes be increased subject to certain limitations. 31 I. C. C., The Five Per Cent Case, 351, 403.

(y) Rates on I. C. I. shipments on merchandise from points on Ill., to Phoenix, Ariz., found unreasonable, and reparation awarded on basis of joint through class and commodity rates formerly in effect. Korrick v. A. T. & S. F. Ry. Co. Unrep. Op. A-745.

(z) Contention that rate on plows from Coldwater to Memphis should bear the same relation to the sixth-class rate as the commodity rates from Evansville and other points bear to the class rate between such points and Memphis, not sustained. Rates prescribed. Orgill Bros. & Co. v. I. C. R. R. Co. Unrep. Op. A-759.

(aa) Complainants attacked the class rates from central freight ass'n. and trunk line territories to Beloit, Wis., as unreasonable and prejudicial compared with the rates from the same points of origin to Rockford, Ill. Beloit was 82 miles from Milwaukee and 91 miles from Chicago; Rockford, 103 miles from Milwaukee and 85 miles from Chicago. Rockford was in the so called "percentage" territory, its rates being 116 per cent of the New York to Chicago rate; while Beloit's rates, like those to other Wisconsin points in the same general territory, were made, from trunk line territory, by combination of the intermediate rates Milwaukee, Chicago, or Burlington, Wis., all 100 per cent points, and from central freight ass'n., territory by application of the joint through class rates to Winona, Minn., as maxima, though lower combinations generally prevailed. First class rates from Buffalo, N. Y., to Beloit, Rockford, and the Mississippi River were 89, 55 1-2 and 59 1-2c for distances of 616, 620, and 663 miles; from New York, N. Y. to Beloit, Malone and Cedar Rapids, Iowa, $1.03, $1.056, and $1.108 for distances of 1003, 1064, and 1131 miles; and from New York to Clinton and Beloit, 90c and $1.03 for 1050 and 1003 miles. HELD that complainants had failed to sustain the burden of proof cast upon them. The fact that rates to Beloit were made on combination, while those to Rockford were stated in percentage of the New York-Chicago rates, was not of itself proof of unlawful discrimination. Complaint dismissed. Rosenblatt & Sons v. A. A. R. R. Co., 35 I. C. C., 324.

(bb) Rate on motorcycle, l. c. l., from Portland, Ore., to Hoquiam, Wash., found unreasonable in so far as it exceeded the subsequently-established rate of one and one-half times first-class. Reparation awarded. Becker v. O. W. R. R. & N. Co., Unrep. Op. A-917.

(cc) Rate on motorcycle from Wagon Works, Ohio, to North Yakima, Wash., found unreasonable to the extent that it exceeded one and one-half times first-class. Case held open for proof. Cycle Motor Co. v. N. P. Co., Unrep. Op. A-925.

CLASSIFICATION

I. RIGHT OF CARRIER TO ESTABLISH.
§1. In general.
§2. Jurisdiction of Commission.
II. BASIS OF CLASSIFICATION.
§3. In general.
§4. Bulk or weight of commodity.
§4½. Knocked-down shipments.
§5. C. L. and L. C. L. shipments.
§6. Competition.
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§7. Mixed carloads.
§8. Possibility of misbilling.
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III. CLASSIFICATION REGULATIONS.
§12. Bulk shipments and ownership.
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IV. COMPARATIVE RATINGS.
A. Analogous articles.
§17. In general.
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V. REASONABLENESS AND APPLICATION.
§22. In general.
§23. Uniform classification.

CROSS REFERENCES

See Additional charges, (aa); Advanced rates, §5 (3); Reduced rates, §5 (f).

I. RIGHT OF CARRIER TO ESTABLISH.

§1. In General.

(a) Carriers are at work upon uniform classification, and Congress has the matter under advisement. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 234.

(b) It would greatly lessen the confusion that now surrounds the situation, and conduce to more harmonious and satisfactory results, if the rule relative to return of empty beer packages of the Western trunk lines and of the Western Classification were the same. Minneapolis Brewing Co. v. A. T. & S. F. Ry Co., 28 I. C. C. 688, 692.

(c) There is no provision of the Interstate Commerce Act prescribing the forms of bills of lading, or providing for a limitation of time within which such claims may be presented, or relating to a waiver of the presentation thereof. By the Interstate Commerce Act it was made the duty of all common carriers to establish just and reasonable classifications of property for transportation, and just and reasonable regulations affecting rates and tariffs and the forms and substance of bills of lading. A. C. Cheney P. A. Co. v. N. Y. C. & H. R. R. Co., 152 N. Y. Suppl. 285, 290.

II. BASIS OF CLASSIFICATION..

§3. In General.

(a) Classification, from its very nature and use, cannot be so minute as to do mathematically exact justice to every variety of commerce that may move. Klauer Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 508, 510.

(b) Complainant chalienged the rating in official classification of one and one-half times first class on sectional bookcases L. C. L., boxed, as unreasonable and discriminatory. In southern and western classification they are, when boxed, given a rating of first class; but are rated one and one-half times first class if shipped otherwise than in boxes. First-class ratings have been established on sectional bookcases boxed, in the Illinois, Texas and Canadian classifications. In Globe-Wernicke Co. v. B. & O. S. W. R. R., 11 I. C. C. 156, 164, the Commission had held that the rate complained of was not shown to be unreasonable. The only difference in circumstances were that in the first instance the complainant shipped the cases in crates, several sections to the crate, while at the present time each section was packed separately in strawboard box; but the weight was 7 lbs. per cu. ft. in each instance. HELD, that the rating of one and one-half times first class had not shown to result in rates which were unreasonable or prejudicial. Complaint dismissed. Globe-Wernicke Co. v. B. & O. S. W. R. R. Co., 31 I. C. C. 274.

(c) Weight, space, value, risk, etc., must be taken into account to determine the proper classification of fresh fruit and vegetables. Rates on Fruits and Vegetables, 30 I. C. C. 56, 61.

(d) The standard classification units derived by averaging units compiled for numerous articles of the different ratings, might justify a certain classification on a given commodity; but usually there are other facts and circumstances to be considered. Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188, 189.

(e) A classification should apply universally in the territory which it purports to cover, and exceptions should be made by individual carriers only for exceptional reasons. Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188, 190.

(f) Increase from sixth to fifth class, in classification rating of paper articles, justified. Made necessary because of need of increased revenue. Rates on Paper between Stations on Boston & Maine R. R., Unrep. Op. A-767.

(g) The volume and desirability of the traffic, hazard of carriage, and the possibility or probability of misrepresta-

tion of the article are considerations of prime importance in classification. At best it is but a grouping, and when an approximation resulting from it is not found to cause the exaction or an unreasonable or discriminatory charge it will not be disturbed. Western Newspaper Union v. A. & R. R. R., 34 I. C. C. 326, 329.

(h) Character, use, bulk, weight, tonnage, or volume, risk, cost of carriage, and controlling conditions caused by competition, have been repeatedly held by the Commission to be basic elements of freight classification. Western Newspaper Union v. A. & R. R. R., 34 I. C. C. 326, 328.

§4. Bulk or Weight of Commodity.

See Express Companies, §18; Passenger Fares and Facilities, §10.

(a) In accordance with prior rulings of the Commission in the Keogh cases, 24 I. C. C. 606, and 26 I. C. C. 689, the respondents put in effect new rates on excelsior C. L. from St. Paul, Minn., to Chicago, Ill., St. Louis, Mo., and Missouri River points, based on a minimum of 20,000 lbs., as against the prior minimum of 30,000 lbs. Protestant asked for a rehearing on the question of minimum and demanded that it be made the same as formerly. John W. Keogh, owner of certain patent rights under which he manufactures an excelsior which may be compressed and baled to a greater density than ordinary excelsior, though still retaining its resiliency, secures denser and heavier bales by using an ordinary press of heavier construction and extraordinary power. With such bales he is usually able to load more than 30,000 lbs. in a 40-foot car, by expense and effort greater than are incident to loading ordinary excelsior to meet the 20,000 lb. minimum. Also, weather conditions must be considered, and at times a lack of only one inch in the height of the car makes it impossible to load 30,000 lbs. in a 40-foot car. From January 31 to October 31, 1913, Keogh shipped from his St. Paul, Minn., factory, via the C. B. & Q. R. R., 139 cars, with an average load of 31,078 lbs. of excelsior. Practically all of these were 40 feet or more in length, and some were furniture cars. Against this the carriers pointed to the original hearing, where competitors of Keogh testified to and showed their inability to load more than 20,000 lb. minimum. The present 20,000 lb. minimum was based on the standard 36-foot car, subject to rule 6-B of Western Classification, under which the minimum weight on 40-foot equipment is 22,400 lbs. HELD, that no classification can be so minute as to separate different goods or densities of the same article into different classes, with varying rates, and that the interests of one shipper cannot be considered to place a burden upon the interests of a majority of shippers of the same article. Petition denied. Rates on Excelsior and Flax Tow from St. Paul, Minn., 29 I. C. C. 640.

(b) Charges assessed on gross weight on asphalt plant on its own wheels in Western Classification Territory not found unreasonable. Clark & Henery Construction Co. v. H. & D. Ry. Co., Unrep. Op. A183.

(c) Bulk considered in determining classification of commodity. Michigan Seating Co. v. G. J. W. Ry. Co., 29 I. C. C. 123, 124.

(d) In charging the same rates for shipments of square baled and round baled cotton there is no violation of section 2, which makes unlawful the collection of a greater or less compensation from one person than from another for the doing of a like and contemporaneous service; for the charges are the same to all shippers shipping the same kind of compressed cotton. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C., 458, 462.

(e) Freight automobiles will load to the minimum weights provided without double-decking the car which is not true of passenger automobiles. Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-708.

§4½. Knocked-down Shipments.

(a) The term knocked down in pieces does not mean that a machine must be severed into all its component parts and these parts shipped as separate pieces. United Refrigerator & Ice Machine Co. v. C. & N. W. Ry. Co., 28 I. C. C. 439, 441.

(b) Shipment of sawmill machinery from Canton, O., to Kelly, La., not found to have been completely knocked down and boxed so as to be entitled to second-class rating. Metropolis Bedding Co. v. B. & O. R. R. Co., Unrep. Op. A368.

(c) Complainant attacked the charg-

es collected by defendant for the transportation of a display rack from New York to San Francisco as unreasonable. The rack was packed in three cases weighing 772 lbs. and a bale of 27 lbs. and charges were collected on the cases at double the first class rate and on the bale at the first class rate. Western classification provided that crated racks, if set up, should take double the first class rate; if knocked down and weighing less than 1,000 lbs., first class; knocked down and weighing 1,000 lbs. or over, third class; all freight shipped in bales, one class higher than in crates. HELD, following Aetna Powder Co. v. C. M. St. P. Ry., 17 I. C. C., 165, that the charges imposed were unreasonable to the extent that they exceeded those that would have accrued at third class and a weight of 1,000 lbs. on the cases, and 1½ times first class and a weight of 27 lbs. on the bale. Reparation awarded. Sloane v. S. P. Co., 33 I. C. C., 509.

§5. C. L. and L. C. L. Shipments.

See Any Quantity Rates, I (h), (f); Evidence, §63; Reconsignment, §2 (g); Special rates and services, (dd).

(a) Commercial and economic conditions must be considered in determining whether a carload rating should be accorded. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 207.

(b) In determining whether a carload rating should be accorded, not merely the physical but the commercial and economic aspects must be considered. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 207.

(c) That shipper presented cotton in such form that carload lading could be doubled and cost of transportation correspondingly diminished, does not, as a matter of right, entitle him to better rate. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 208.

(d) Whether carload rating should be accorded in a particular instance depends not only upon whether that commodity is offered in carload quantities, but upon other considerations. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 209.

(e) To establish carload rating here and not elsewhere, would be to throw out of balance the relation between rates on cotton piece goods in all parts of the country. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 210.

(f) As a rule, carload freight is weighed at point of origin. American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C. 350, 351.

(g) Checking car against car cannot properly be done, since it gives to the less-than-carload shipment of corn in, and in some instances out, the carload rate. Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 370.

(h) Ordinarily champagne is shipped in less than carloads. There is, however, considerable movement in carloads in bond. Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 377.

(i) There is no necessity for the establishment of a carload rate on champagne if the present any-quantity rate is a reasonable rate for the transportation of that commodity in carloads. Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 378.

(j) Less-than-carload rates on automobiles from New York and Syracuse, N. Y., to Portland, Ore., not found unreasonable. Keats Auto Co. v. O.-W. R. R. & N. Co., 28 I. C. C. 412.

(k) Carload shipments are sealed and transported intact to destination, and this method results in the minimum risk of pilferage or damage as compared with the risk to which less-than-carload shipments are exposed. Keats Auto Co. v. O.-W. R. R. & N. Co., 28 I. C. C. 412, 413.

(l) Less-than-carload rates are applicable to a different class of traffic from that embraced in carload and peddler-car shipments. Rates on Packing-house Products, 28 I. C. C. 599, 600.

(m) Charges collected on an automobile and certain extra parts, based on less-than-carload rates applied to the several articles, found unreasonable to the extent that they exceeded charges on basis of the first-class carload rate applied to the entire shipment at a minimum weight of 10,000 pounds. Reparation awarded. Northwest Auto Supply Co. v. S. I. Ry. Co., Unrep. Op. A158.

(n) Less-than-carload rates assessed on shipments of tobacco from Marion, N. J., to San Francisco, Cal. Carload rate with minimum weight plus charge for loading performed by employes of car-

riers should have been assessed. Reparation awarded. American Tobacco Co. v. P. R. R. Co., Unrep. Op. A160.

(o) Commission has approved carload rates which are less per 100 lbs than the L. C. L. rates on same commodity. Woodward-Bennett Co. v. S. P. L. A. & S. L. P. R. Co., 29 I. C. C. 664, 665.

(p) Higher minimum on C. L. shipments of ice from Omaha than from Ashland, Neb., to Kansas City, Mo., found unreasonable. Hammond Bros. v. C. B. & Q. R. R. Co., Unrep. Op. A502.

(q) The offering of a carload quantity entitles the shipper to a carload rating only in case the public interest or other valid considerations do not require the contrary. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 632.

(r) According carload rating on door and window locks, knobs, etc., to St. Louis, while denying same to Fort Smith, subjects the latter to undue prejudice and disadvantage in favor of St. Louis. Atkinson-Williams Hdwe. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-652.

(s) Rates on coffee to Birmingham and Nashville should be upon equal basis as to carload and less-than-carload shipments. Merchants' & Manufacturers' Asso. of Birmingham v. L. & N. R. R. Co., Unrep. Op.

(t) The offering of a carload quantity entitles the shipper to a carload rating only where the public interests or other valid considerations do not require the contrary. Each case must be considered on its merits and in determining whether a carload rating should be accorded not merely the physical but the commercial and economic aspects must be considered. Am. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 469.

(u) The rate relation of carload express to carload freight averages a higher percentage than that of less-than-carload express to less-than-carload freight. Indeed, the variations are such that specific freight rates between certain points are not admissable criteria of what express rates should be between the same points. Lindsay & Co. v. Northern Express Co., 33 I. C. C., 394, 397.

(v) The services rendered by carriers in connection with the less-than-carload movement differ in nature and extent from those incident to carload movement, whether by freight or express. This difference has frequently been noted by the Commission in connection with freight rates. It has not been considered so controlling as to warrant establishment of carload rates where the rates in effect were for "any quantity." Lindsay & Co. v. Northern Express Co., 33 I. C. C. 394, 397.

(w) Principles underlying conclusions with respect to carload traffic apply with equal force to less-than-carload traffic. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 119, 123.

(x) Carload rates are an integral part of American rate structure. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 464.

(y) Less-than-carload rates on safe and automobile which were shipped with household goods not found unreasonable. Wallis v. T. & N. O. R. R. Co., Unrep. Op. A-852.

(z) Complainant attacked the less than-carload ratings of first and third class on lead stereotype plates, new and old, in official and southern classification territories as unreasonable and discriminatory compared with the ratings in effect in western classification territory. The new plates, weighing from 10 to 12 lbs. per "page," were shipped in boxes containing from one to five "pages;" the shipping weight of the two page parcel being 31 1-2 lbs. About 2,000,000 lbs moved annually, 80 per cent going as freight, and 99 per cent of the returned shipments being by freight. The new plates were rented to publishers, and, upon their return as old or unused plates, were melted down. Inability of carriers to distinguish between old and new plates led to the possibility of misrepresentation in these shipments; and the traffic was not remunerative because of the small shipments, both in tonnage and volume, and movement over short distances. HELD, that complainant had failed to show that the existing classification ratings were unreasonable or unjustly discriminatory, the volume and desirability of traffic considered. Old plates were not entitled to lower rates as "scrap lead." Complaint dismissed. Western Newspaper Union, v. A. & R. R. R., 34 I. C. C. 326.

(aa) In arriving at the relation which

should be observed between straight and mixed carload rates, it is proper to give due regard to the nature and cost of the special service furnished. Under the prevailing practice, it is the rule in the absence of a specific rate upon the mixed shipment, to apply the highest rate and highest minimum weight applicable on any of the commodities contained in the shipment. Where there is a substantial difference between the rates on the several commodities, the application of the highest rate and highest minimum weight certainly permits the carrier to secure the additional compensation which the conditions attending the transportation of mixed shipments appear to warrant. Mixed Carload Shipments of Lime, Cement and Plaster, 34 I. C. C., 124, 126.

§6. Competition.

See Competition.

(a) It does not follow that the rate on veneer should be as low as the rate on lumber, where the considerations which produced the lower rate on lumber are the great volume of lumber traffic and water competition. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268.

§6½. Crated Shipments.

(a) Term "crated" or "in crates" held to mean inclosed on sides, including bottom, with framework. Wolverton v. U. P. R. R. Co., 31 I. C. C. 23.

§7 Mixed Carloads.

See cars and car supply, §6¾ (a); Tariffs §14 (b).

(a) Complainant protested against the charge of $134.35 on a mixed carload of 16 hogs weighing 3,420 lbs., and 21 cattle weighing 13,090 lbs., from Bradley, Ark., to East St. Louis. Defendant's tariff made no provision for mixed shipments of cattle and hogs, but intentionally excluded the mixture. The rules also provided that mixed shipments should take the highest animal rate and the highest minimum. The charge in question was computed at the carload rates and minimum rates for the two kinds of live stock contained in the shipment. The shipment was received without demur by the carrier, and transported without damage to destination. HELD, that the charges were unreasonable to the extent that they exceeded the charges that would have accrued had the cattle rate of 31½c per 100 lbs., and minimum applicable thereto, been applied. Reparation awarded. Lee v. St. L. S. Ry. Co., 29 I. C. C. 101.

(b) A schedule which fails to provide a rate for a mixture which can be properly handled and transported without damage to destination, is unreasonable. Lee v. L. S. Ry. Co., 29 I. C. C. 101, 102.

(c) The Commission considered a proposed tariff provision eliminating gasoline engines from mixed shipment with windmills and windmill appliances from Chicago and Chicago group points to California terminals and intermediate points. Such mixtures took a terminal rate of $1.50. By the proposed elimination, gasoline engines would take a rate of $1.40 to terminals and $1.60 as a maximum to intermediate points, in straight carloads, minimum 30,000 lbs., or less than carloads, $3.40; while, if mixed as before, the rate on the mixture would be computed on a class A basis, resulting in a rate of $1.77, both to the terminal and as a maximum to interior points. In 1912 a tariff was issued permitting shipment of mixed carloads of agricultural implements, windmills and gasoline engines. Though ultimately permitted to become effective in Transcontinental Commodity Rates, Westbound, 26 I. C. C. 456, this tariff was for a time suspended by the Commission, and in its final readjustment the agricultural implement feature was stricken out, but the privilege of mixing gasoline engines with windmills was left, through oversight. Gasoline engines are not necessary parts or usual appurtenances to windmills; they move in carloads, and may be considered a carload and separate article of traffic; and a minimum carload is in value about twice that of a minimum carload in windmills. It appeared that carriers serving north coast terminals had not proposed the same action with respect to the mixture as had the carriers to the California terminals. HELD, the carload rates on windmills or gasoline engines separately are not unreasonable in themselves, nor is it unreasonable for the carriers to withdraw the privilege of mixing gasoline engines with windmills. The direct and rate-making routes to northern coast terminals are via carriers having no direct routes to California terminals, and carriers to California cannot be held responsible for discrimination resulting from lower rates to the north coast. Or-

der of suspension vacated. Rates on Gasoline Engines and Windmills, 29 I. C. C. 643.

(d) Muriate of potash, sulphate of potash, kainit, double manure salts, manure salts, sylvinite and hartsalz may be shipped in mixed carloads at the fifth-class rate with minimum carload weight of 40,000 pounds. German Kali Works, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 229.

(e) Rules in Western and Official Classifications prescribing basis for charges upon packages containing premiums not found unreasonable. Minneapolis Cereal Co. v. C. & N. W. Ry. Co., 28 I. C. C. 415.

(fg) Privilege of mixing carloads of wrought-iron conduit pipe and fittings should be granted where same commodity rates in effect on straight carloads of pipe and straight carloads of pipe fittings. New England Electric Co. v. C. R. I. & P. Ry. Co., 28 I. C. C. 418.

(h) Complainant attacked the second-class rate of 67c, minimum weight 12,000 lbs., for the transportation of incubators and brooders in mixed carloads from Omaha, Neb., to Memphis, Tenn., as unreasonable and discriminatory, in comparison with the rate of 32c on furniture and agricultural implements between the same points. There was no competition between incubators and brooders and furniture or agricultural implements, and the value of the latter is one half that of the former, which invoices $2,324.30 to a 60-foot car. Under Western Classification, incubators and brooders, knocked down flat, boxed, minimum carload weight 30,000 lbs., were rated fifth class. But the incubators in question could not be knocked down flat. They were, however, boxed, and could be loaded 18,000 to a 36-foot car. Under such circumstances they were rated third class in the Western Classification. HELD, that brooder and incubator rates could not be compared to furniture and agricultural implement rates; but that the second-class rate applied to complainant's shipment was unreasonable to the extent that it exceeded the third-class rate of 47c, with a minimum of 18,000 lbs., for a standard 36-foot car. Reparation awarded. Geo. H. Lee Co. v. I. C. Ry. Co., 28 I. C. C. 515.

(i) Rates on bananas and cocoanuts in mixed carloads and on cocoanuts in straight carloads should be no higher than on bananas in straight carloads. Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I. C. C. 594, 596, 598.

(j) Tariff did not authorize shipments of pears and watermelons in mixed carloads, at the carload applicable to the article having the highest rate and minimum. Charges should have been assessed on the basis of the carload rate on watermelons and the less than carload rate on pears. Reparation awarded. Jelks v. C. L. R. R. Co., Unrep. Op. A-240.

(k) Carload rates should not be denied on mixed merchandise shipped by forwarding agent because shipper is not owner of property. Sheldon & Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A-276.

(l) Mixed shipments of transit and non-transit grain from Chicago, Ill., to Harbor Beach, Mich., found entitled to carload rate from transit station to destination. Huron Milling Co. v. P. M. R. R Co., Unrep. Op. A-396.

(m) Complainants attacked the rates and mixing privilege on lime, plaster and plaster products from Seattle and Tacoma, Wash., to points in Oregon, eastern Washington and Idaho, on the lines of the O.-W. R. & N. Co., O. S. L. Ry. and Camas P. Ry. as unreasonable and unduly prejudicial compared with lower rates and a less restricted mixing privilege on traffic from Lime and Gypsum, Ore., to Portland, Ore., and other consuming points in the northwest. From Seattle the O.-W. R. & N. Co. runs south through Tacoma and Portland, 180 miles, thence east along the Columbia River to Umatilla, 187 miles, thence southeast to Huntington, on the O. S. L., 217 miles. Lime is 4 miles and Gypsum 7 miles from Huntington. From Umatilla and Pendleton, 44 miles southeast and intermediate to Huntington, lines of the O.-W. R. & N. Co. run northeast and serve the southeast corner of Washington and northern Idaho. The rate on lime from Seattle and Tacoma to Portland is 10c per 100 lbs.; but lime is not manufactured at these points, but shipped from points 75 miles north of Seattle to Portland on a through rate of 13½c per 100 lbs., minimum 50,000 lbs. Of this rate the water carriers receive 5c, while the rail lines absorb wharfage charges of 2½c per 100 lbs., and the O.-W. R. & N. Co., in addition, switching charges of $3 per car. From Tacoma, the only Puget Sound point at

which plaster is manufactured, the local rate to Portland is 7½c, minimum 60,000 lbs. Mixed carloads of lime and plaster from Seattle and Tacoma to Portland take a rate of 14c, minimum 30,000 lbs. Rates from Seattle and Tacoma are generally the same, rates on plaster being usually higher than those on lime, but applicable to mixed carloads of lime with mortar color, stucco, etc. The minimum on both lime and plaster is generally 30,000 lbs. Rates from Lime and Gypsum were the same, optional rates being published to Seattle and Tacoma of 17½c, minimum 60,000 lbs., and 15c, minimum marked capacity of car, but not less than 80,000 lbs. The rate to Pendleton, 169 miles, from Lime, of 12½c, is blanketed 230 miles to and including Portland. Application of the 12½c rate to Portland as maximum to intermediate points results in lower rates to points east of Portland than apply from Seattle and Tacoma. For instance, Dallas and Arlington, Ore., 312 and 258 miles from Lime, and 230 and 284 miles from Tacoma, are included in the 12½c blanket, whereas from Seattle and Tacoma the rates are 14c and 18c on lime and 17c and 22c on plaster. Between Portland and Umatilla four branches of the O.-W. R. & N. Co. extend south; and the rates from Seattle and Tacoma to their southern termini are not proportionally higher than the rates from Lime and Gypsum. Plaster is shipped by water to Puget Sound points from Tacoma, and also comes from Nevada, the rate being $2 per ton from Mound House, Nev., to San Francisco, and thence by water, $1.50 per ton. Tramp steamers also bring it from San Francisco at from $1 to $1.25 per ton. HELD, that it does not appear that the rates to Portland and points north are unduly prejudicial to complainants, but the existence of eastbound rates in some instances twice as high as westbound rates for corresponding distances, is not justified. The O.-W. R. & N. Co. should make the proper reductions. Pacific Coast Gypsum Co. v. O.-W. R. & N. Co., 30 I. C. C. 135.

(n) Just what mixture of implements may be included in a car in order to take a certain rate is of as much importance to the jobbers as the rate itself. Wichita Business Assn. v. A. T. & S. F. Ry. Co., 30 I. C. C. 374, 375.

(o) A rate in cents per hundred lbs. usually preferable to a flat rate dollars-per-car system. Rock Springs Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 27.

(p) Carriers may require shipper to partition cars for mixed shipments of live stock. Lee v. St. L. S. W. Ry. Co., 29 I. C. C. 101, 102.

(q) A rule that, in the absence of specific commodity rates on mixed carload shipments of two or more kinds of lumber, freight charges shall be assessed on basis of highest carload rate contained in shipments, provided total charges must not exceed charges arrived at by application of carload and minimum carload weight on any one kind of lumber, and less-than-carload rate on actual weight on other kinds, is not objectionable. Lumber Rates, S. Ry. Points to Eastern Points, 31 I. C. C. 244, 252.

(r) Defendants subsequently discovered that the shipment consisted, instead of a straight carload of mahogany lumber, a mixture of oak and mahogany lumber, on which a higher rate was applicable. Higher rate not found unreasonable. Card Lumber Co. v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-591.

(s) It is the prevailing rule that the rate applicable on mixed carloads of live stock is the rate prescribed for the highest class of stock in the car, subject to the highest minimum weight for any class of stock in the car. Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 324.

(t) Mixed carload rate made applicable to several of the paper articles from St. Louis, Mo., to Muskogee, Okla., upon which less-than-carload rates were formerly assessed. Reparation denied. Adleta v. M. K. & T. Ry. Co. Unrep. Op. A-734.

(u) Mixed-carload rate may make possible an unjust discrimination against shippers of straight carloads and points of origin from which rate does not apply. Rates on Cement, Lime, Salt, etc., 32 I. C. C. 532, 535.

(v) The Commission considered the proposed withdrawal of a tariff provision under which mixed carloads of lime, cement and plaster might be shipped "from interstate to Arkansas points," at the rate and minimum applicable to the highest rated commodity. The proposed cancellation would compel protestants to pay the less-than-carload rates; thus giving intrastate shippers an advantage over their interstate com-

petitors, the spread between c. l. and l. c. l. rates being less in intrastate than in interstate rates. After the hearing respondents cancelled the commodity rate on cement, the highest rated commodity, substituting the class C rate, thus increasing the rates on mixed carloads 35 per cent. HELD (1) that the practice of mixing carload shipments of lime, cement, and plaster should be continued; (2) that the action of carriers in changing their tariffs before the Commission would render a decision was manifestly improper; and (3) that carriers establish rates and minimum weights on mixed carloads not higher than the highest commodity rate and highest minimum weight applicable to straight carloads of any of the commodities in the mixed car. Conflicting tariffs cancelled. Mixed Carload Shipments of Lime, Cement and Plaster, 34 I. C. C. 124.

(w) The Commission has previously pointed out the desirability of liberal provision for mixtures. The benefits to shipper and consignee are obvious. Orders may be made for smaller quantities of each commodity and the service contributed by them in loading and unloading obviates the expense of handling by the carrier which is involved in less-than-carload shipments, as well as the greater inconvenience of warehouse delivery as compared with track delivery. Mixed Carload Shipment of Lime, Cement and Plaster, 34 I. C. C. 124, 125.

(x) The practice of shipping mixed cars is of value to the carrier in that it results, in a heavier loading of the cars and in fewer claims for loss and damage; it is also of value to the shippers in that they receive upon less-than-carload shipments the benefit of the carload rate; it also involves a more expeditious service, and the goods arrive in better condition; it enables the retailer also to do a larger volume of business on a smaller investment. Furniture Mfrs.' Asso. v. A. A. R. R., 34 I. C. C., 262, 265.

(y) Complainant attacked the western classification first class rating on feed or litter carriers in less than carloads, the minimum of 24,000 lbs. on the same in straight carloads or mixed with stalls, stanchion frames, or stanchions, and the refusal to permit mixture of their commodities in carloads with agricultural implements as unreasonable. Representative litter carriers were worth $13.60, weighed 176 lbs., and measured 28 cu. ft.; representative feed carriers, $14.80, weighed 200 lbs., and measured 23 cu. ft. No carload movement of the commodities was shown. The committee on uniform classification had limited the list of "agricultural implements" to articles used in preparing the soil or in planting, harvesting, or storing crops. HELD, that neither the rates, rating provisions for mixtures, nor minimum complained of were unreasonable, or otherwise in violation of the Act. Complaint dismissed. Louden Machinery Co. v. A. T. & S. F. Ry., 34 I. C. C. 383.

(z) Advertising matter constituted only 30 pounds of total weight, and was descriptive of the incubators and brooders contained in shipment. Second class rate found unreasonable. Reparation awarded on basis of third-class rate contemporaneously applicable. Lee Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-775.

(aa) Tariff rule which prohibited the inclusion in mixed shipments of household goods of an iron safe and automobile, and less-than-carload rates charged on the latter, not found unreasonable. Wallis v. T. & N. O. R. R. Co., Unrep. Op. A-852.

§9. Risk.

(a) Risk is one of the elements entering into the present day rate fabric, and innumerable classifications and tariffs contain packing and shipping requirements which can have no other justification than the right of the carrier to require the use of substantial and suitable containers and the elimination of hazard by the secure staying of unpacked articles. Carriers must furnish suitable cars and receive and transport goods tendered to them in safe shipping condition, but are not required to prepare shipments for transportation. Standard box, stock, ventilated, and refrigerator cars will accommodate all of the ordinary and usual needs of shippers, and if more than this is demanded because of the form, nature, or peculiar characteristics of goods tendered for conveyance, some obligation must attach to the shipper in connection with the additional demand. Dunnage Allowances, 30 I. C. C. 538, 542.

§10. Use of Commodity.

(a) A difference in the rate according to the use to which a commodity is put has been condemned by this Com-

mission, and the Supreme Court of the United States. Paper rates from Manitowoc and Milwaukee to Kaukauna, Wis., 28 I. C. C. 305, 307.

(b) Rules in Western and Official Classifications prescribing basis for charges upon packages containing premiums not found unreasonable. Minneapolis Cereal Co. v. C. & N. W. Ry. Co., 28 I. C. C. 415.

(c) Contention that description of wagon wood and plow beams in the rough until it has gone through a further process of manufacture amounts to classification not according to character but according to use. Sligo Iron Store Co. v. St. L. & S. F. R. R. Co., 28 I. C. C. 616, 617.

(d) It is improper to make the rate dependent upon the use to which the carpets or rugs are to be put. Olson Rug. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A521.

(e) Complainant attacked the classification and rates on granite for monumental purposes from quarry points in Vermont to points in Nebraska such as Fremont and Grand Island, especially the portion of the rates from points of origin to the Mississippi River crossings. In Official Classification territory marble, granite, jasper, onyx and stone, n. o. s., rough quarried, sawed, hammered, chiseled or dressed (but not polished) take in C. L. the 6th class rate. Polished granite and granite monuments take the 5th class rate. The carriers were parties to tariffs, however, which carried a different commodity rate on such shipments. A typical one for instance, contained an item as follows: "Stone and granite, C. L., carried under the official classification at sixth class rates, to include stone and granite, polished or planed, carloads, but not to apply on monuments or parts thereof, minimum carload weight as per official classification. Also stone and granite curbing, flagging and paving, carloads, minimum carload weight as per official classification." Under this tariff granite which was billed by the shippers or by order of the carriers as monuments or parts thereof paid a rate of 31c. while polished granite not so designated paid 21c, a difference of 10c against the monumental granite. However, in the Western Classification this distinction was not made. In Trans-Missouri Tariff I. C. C. 253 the relevant provision reads. "Granite and marble, hammered, finished or dressed, not carved, lettered or sculptured, all chiseled, dressed or polished pieces to be securely boxed or crated, with apertures not exceeding 4 inches in width and partitions to be fully protected by cleats and boxing for same, minimum weight 50,000 pounds." The quoted provisions have led to controversy as to the proper rates to apply to the traffic. It is the practice of the dealers to order the granite according to exact specifications. The different parts of the monument are shipped separately to the dealers and these to a considerable degree are in a finished state, the dealer doing little other than lettering and sometimes adding a certain amount of ornamental carving. This additional work adds to the value of the monument about 20 to 35 per cent. Shippers contend that the granite when shipped does not constitute "monuments," but are merely dressed of polished granite, such as is used for building purposes and that to charge the higher rate is to discriminate against the commodity because of the use to which it is put. So far as appearances are concerned, it is difficult in many cases to determine whether a shipment is monumental granite or building granite. There is little to choose between monumental and building granite as to liability to damage in transit. While marble is the only competitor of monumental granite, building granite must come into competition with various other materials. There is no competition between building and monumental granite. Considering all grades, building granite is of lower quality and value than monumental granite. The classification, however, in the case of building granite made no difference between the rough and the high-grade, dressed and polished granite. It appeared that the bulk of the granite used for monumental purposes in the Nebraska territory was in quality and value much the same as, and in a number of instances considerably inferior to the dressed and polished building granite, which took a rate lower by ten cents. While this high-grade building granite was not the bulk of the movement of building granite generally, and in the case of Nebraska was small compared to the movement of monumental granite, its amount was sufficient to afford a real basis for comparison and the charge of inequality in the carriers' treatment of the two kinds of stone in the light of their similarity in quality and value.

HELD, the carriers have not justified the difference in classification and rates applicable respectively to dressed and polished granite used for building purposes and that used for monumental purposes, and the present classification rating and the rate to the Mississippi River crossings complained of on monumental granite were unjustly discriminatory. The contention as to the competitive nature of the building granite rate is not sufficient to justify a difference in the two rates. If monumental granite is carved, lettered or sculptured, it should properly take a slightly higher rating and rate than those applicable to building or monumental granite, because the addition of lettering, carving or sculpturing results in a considerable increase in the value of the commodity and makes it more susceptible to damage in transit. Reparation denied. Nebraska State Ry. Commission v. C. V. Ry. Co., 32 I. C. C. 41.

(f) Under section 2, carriers may not maintain a rate differential based upon the use to which the commodity is to be put. Douglas & Co. v. I. C. C. R. R. Co., 31 I. C. C. 587, 593.

(g) It is well settled that rate should not be made with respect to the use to which the commodity is to be put. Dupuis v. F. E. C. Ry. Co., Unrep. Op. A-739.

(h) The fact that fabricated articles are similar can not, standing alone, warrant a similarity of treatment where it also appears that such articles are in no wise competitive. Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185, 187.

(i) Tariff corrected so that rate on sand from Cumberland, Md., to High Point, N. C., is $3.30 per net ton without restriction as to use. Reparation awarded on account of unreasonable rate. Standard Mirror Co. v. S. Ry. Co., Unrep. Op. A-788.

§11. Value.

See Evidence, §61.

(a) The general rule is that manufactured products bear higher rates of transportation than does raw material, and it is founded in reason, because ordinarily there is a substantial difference between the value of the one and that of the other, and frequently there is a greater degree of risk incident to the transportation and care of the manufactured product than of the raw material. The practice, however, is not universal, and is departed from in some instances because the reasons for the distinction are lacking, and in other cases, because of countervailing commercial conditions and considerations. Anson, Gilkey, & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 339.

(b) If monumental granite is carved, lettered, or sculptured it should properly take a slightly higher rating. Nebraska State Railway Comm. v. C. V. Ry. Co., 32 I. C. C., 41, 43.

(c) Kind and value of stone should be basis for such differences as may properly exist in classification. Nebraska State Railway Comm. v. C. V. Ry. Co., 32 I. C. C., 41, 43.

(d) Lard substitute is slightly less valuable than lard. Texas Refining Co. v. A. & V. Ry. Co., 32 I. C. C. 192, 193.

(e) Considering element of value, it would seem prima facie that veneer and built-up wood should take somewhat higher rate than lumber. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 267.

(f) Considering element of value, record would warrant increase of hardwood rates nearer to yellow-pine level. Northbound Rates on Hardwood, 32 I. C. C. 521, 528.

(g) Higher rate on barley than on malt, the manufactured product of barley, found to be unjustly discriminatory. Gate City Malt Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-890.

(h) Higher rate on barley from Minneapolis, Minn, to Omaha, Nebr., than on malt, the manufactured product of barley, found to be unjustly discriminatory. No proof of damage; reparation denied. Gate City Malt Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-890.

(i) Value, though important, is not the controlling element in classification. Louden Machinery Co. v. A. T. & S. F. Ry., 34 I. C. C. 383, 384.

III. CLASSIFICATION REGULATIONS

§12½. Duplicate Shipments.

(a) Complainant had shipped two boxes of drugs and a wooden pedestal aggregating 200 lbs. from Buffalo, N. Y., to Eau Claire, Wis., and paid the charges, 16c, on the pedestal, though it was not delivered, having been lost in transit. Another pedestal, weight 26 lbs., was accordingly shipped on which

the minimum charge of 56c was collected. Defendant's offered to pay complainant $3.00 the value of the first pedestal, and refund the 16c freight charge. Complainant demanded 40c additional excess of freight charges on second shipment. In 24 I. C. C., 645, reparation was granted in the sum asked. On reargument it appeared that the provision of the uniform bill of lading limited liability in case of loss to the value of the property plus the freight charges paid; but that these provisions had not been uniformly enforced by defendants until shortly before the Commission's first report, and was still disregarded by some carriers. HELD that the absence of uniformity on the part of the carriers in enforcing the provisions of the bill of lading, its disregard by defendants up to a certain date, its arbitrary enforcement thereafter, and its continued nonobservance by other carriers over which complainant shipped had resulted in an unreasonable discriminatory practice. All carriers using bills of lading with this provision should provide for free movement of shipments weighing less than 100 lbs, made to replace a lost article upon which, as part of a shipment, the charges would be less than if shipped alone. Order of reparation vacated, and case held open for entry of further order. Larkin Co. v. E. & W. Transportation Co. 34 I. C. C., 106.

§13. Loading and Unloading.

See Facilities and Privileges, §10; Transportation, §10.

(a) That shipper presented cotton in such form that carload lading could be doubled and cost of transportation correspondingly diminished, does not as a matter of right, entitle him to a better rate. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 208.

(b) Generally agreed that nesting of culverts was frequently injurious and that nested culverts of the larger sizes are much more difficult to handle than the individual culverts, loading and unloading being done by hand. Klauer Mfg. Co., v. A. T. & S. F. Ry. Co., 28 I. C. C. 508, 509.

(c) Bridge iron loads lighter per car than merchant iron, and it is difficult to find return loading for flat or gondola cars used in its transportation. Canton Bridge Co. v. P. Co., Unrep. Op. A-612.

§14. Marking and Addressing.

See Special Rates and Services, (c).

(a) A label need be attached to only one package in each shipment of perishable property, such label to indicate the number of packages in the shipments. In Re Express Rates, 28 I. C. C. 132, 136.

(b) Different colors for labels of explosives and other dangerous articles prescribed. Storage Charges in C. F. A. Territory, 28 I. C. C. 372, 373.

§15. Minimum Charge.

(a) Complainants, brewers at Minneapolis, St. Paul and Duluth, Minn., and La Crosse, Wis., assailed defendant's regulation under which single shipments of returned empty beer packages were subjected to a minimum charge of 100 lbs., at third-class rates. Defendants were all parties to both Western Classification and Western Trunk Line circulars. Under the Western Classification rule, such shipments weighing 100 lbs. or less would be subjected to a charge of only one half of the fourth-class rate, while under the Western Trunk Line rule, they would be charged the third-class rate, provided in each case that no charge be less than 25c. Tariffs of defendants and other carriers operating in the various territories vary greatly with respect to the minimum charge rule and rates on returned "empties." The G. N., N. P., and M. St. P. & S. Ste. M. railways provide for a minimum charge on single shipments of 25c. Most carriers operating in Western Trunk Line Territory provide a minimum charge of 100 lbs. at third-class rate, but not less than 25c; others that minimum charge shall be for actual weight, but not less than 25c; and in other cases the charge is dependent on point of destination; thus, via the St. L. & S. F. R. R. between all stations and Cairo and East St. Louis, 50c; between all stations and Chicago, 75c; while in some cases varying minimum charge rates, dependent upon the territory to which they apply, are published. Prior to 1907 there were varying minimum charges in Western Trunk Line Territory—50c and 75c, according to distance. These charges were reduced to 40c and 50c, and later the rule was changed to provide a minimum charge at the rate to which the article was subject. Subsequently the minimum charge at the third-class rate was provided. There is a difference between full

and empty packages in liability to damage and in the kind of protection necessary en route. In practice, the rate of one-half of fourth class, minimum 100 lbs., work as follows: The third-class rate, Des Moines to St. Paul, is 40c, and the fourth-class rate 25c. Under Western Classification, an empty beer barrel is estimated at 100 lbs. The rate on one barrel would be one half of the fourth-class rate, or 12½c, but the minimum charge would be 40c. On two barrels, the rate would be 25c, and on three barrels, 37½c, subject to the same minimum charge of 40c. The charge on 300 lbs. of beer would be the third-class rate of 40c per 100 lbs., or $1.20; thus it is seen that beyond 100 lbs. in weight the charge on beer is much higher than the same weight of "empties." HELD, that the minimum charge rule of the carriers parties to the Western Trunk Line circulars does not appear to be unreasonable. Complaint dismissed. Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co., 28 I C. C. 688.

(b) The Commission considered the reasonableness of the rules in the three classification territories, relating to minimum charges on articles too long or too bulky to be loaded through the side doors of box cars. Under these rules there was no uniformity in charge on like shipments moving. If the article moved in a closed car it might be charged only the l. c. l. rate at actual weight; but if loaded on a flat car it was subject to charge on a 4,000 or 5,000 lb. minimum. The average length of cars varied from 36 to 40 ft. in the different territories, as well as the percentage of box cars provided with end doors or windows. The loading of these articles in closed cars entailed much unusual handling, and extra expense to the carrier in loading. HELD, that unless otherwise provided, a shipment containing articles the dimensions of which do not permit loading through the center side doorway, 6 feet wide by 7 feet 6 inches high, without the use of end door or window in a closed car not more than 36 feet in length by 8 feet 6 inches wide and 8 feet high shall be charged at actual weight and authorized rating, subject to a minimum charge of 4,000 pounds at the first-class rate for the entire shipment. Minimum Charges on Bulky Articles, 33 I. C. C. 378.

§16. Packing.

See Commodity Rates §5 (h).

(a) When differentials are not disproportionate to differences in transportation conditions, higher rates on salt in packages than on salt in bulk not unreasonable. Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 42.

(b) Different rates according to character of container or form in which commodity is shipped, not uncommon. Gottron Bros. Co., v. G. & W. R. R. Co., 28 I. C. C. 38, 42.

(c) Dissimilarity of circumstances and conditions surrounding the transportation of potatoes in barrels and in hampers fairly warrants some difference in rates. Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., 28 I. C. C. 274, 276.

(d) Generally agreed that nesting of culverts was frequently injurious, and that nested culverts of the larger sizes are much more difficult to handle than the individual culverts, loading and unloading being done by hand. Klauer Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 508, 509.

(e) Complainants attacked defendant's tariff prescribing commodity rates on various articles moving from California terminals in boxes "made entirely of wood or wood and metal," as unreasonable and discriminatory, in that the effect thereof was to subject commodities shipped in fiber boxes to class rates, in some instances as much as 400 per cent in excess of the commodity rates. Fiberboard boxes first appeared as a package in 1905. They consist of not less than three layers of paper, the outer layer being waterproofed and the middle layer in some instances corrugated. In 1909 the use of fiberboard boxes was authorized by the three classification committees, the Western Classification rule providing that the ratings on articles in wooden boxes should apply on the same articles in fiberboard, pulpboard or double-faced strawboard boxes if certain requirements as to thickness and strength of fiberboard and dimensions, weight of package, and packing and sealing, were complied with. The weight limit was fixed at 90 pounds. No departure from this rule was made in any commodity tariff, except the one naming rates on eastbound shipments from California terminals. On westbound traffic defendants applied com-

modity rates on articles packed in fiber boxes. Opposition to the use of fiber boxes arose, not from the railroads, but from the lumber interests which the roads were afraid of offending, and the situation as it developed was in effect a contest between fiber box manufacturers and shippers on the one hand, and lumbermen and wooden box manufacturers and shippers on the other. The only conclusions of fact to be deduced from the mass of evidence introduced were that some commodities were being shipped in fiber boxes which should not be so shipped, that the majority of faulty fiber packages were of corrugated board, and that the rule as to weight, dimensions and packing and sealing was honored principally in the breach. Fiber packages occasioned some difficulty because of lack of material to make repairs, but this might be remedied; and in respect to immunity from pilfering the sealed fiber box had the advantage. HELD, that for many commodities the fiber box constructed, packed and sealed in accordance with the classification rules will carry as well as the wooden package, and that defendant's rule limiting "boxes" to those constructed of wood or wood and metal was discriminatory and, comparing it with the rules in Western, Official and Southern classifications, unreasonable. Rules should also be adopted providing some restriction with reference to insecure wooden containers. Carriers and shippers should work out some rule as to what commodities may not be shipped in fiber. The classification rule as to fiber boxes, while technical and involved, is no more so than similar rules prescribed by the Commission, and defendants should amend their rule regarding boxes to conform thereto. Existing rules requiring the box maker to stamp on the box a certificate as to dimension, strength, and weight limit, and the shipper to certify on his bill of lading that the box tendered conforms to the classification rules, would appear to properly safeguard the matter. Public policy demands that the jobbers should not be relieved of liability for any breach of the rules, even though they distributed goods in the original package and have no personal knowledge of the construction or sealing of the box. Pridham Co. v. S. P. Co., 30 I. C. C. 117.

(f) While fiber box containers are being accepted by carriers in some territories for the transportation of some articles which do not carry safely therein, the Commission does not undertake to indicate the commodities which should be denied transportation in such containers. Pridham Co. v. S. P. Co., 30 I. C. C. 117, 123.

(g) Classification rules with respect to the construction, packing, and sealing of fiber boxes should be rigidly enforced and the shipper held responsible for any violation thereof. Pridham Co. v. S. P. Co., 30 I. C. C. 117, 124.

(h) The authorities have generally recognized that it is not only the right but the duty of the carrier to decline shipments which are not so prepared or packed as to render them safe for transportation, and to establish reasonable rules and practices in this respect. Dunnage Allowances, 30 I. C. C. 538, 542.

(i) Complainant attacked the charge of the double first-class rate imposed on the shipment of an automobile, crated, from Wamsutter, Wyo., to Boulder, Colo. Western classification provided that automobiles, L. C. L., be rated at 1½ times first class crated, and double first class when not crated, and that "crated" should mean inclosed on all sides, including the bottom, so as to permit of its being taken in and out of the car within the crate. No boards were placed under the automobile and it could not have been removed without breaking the crate. HELD, that the evidence showed that the automobile was not crated in accordance with the classification requirements, and that the charges were assessed in accordance with the published tariffs and were not unreasonable. Reparation denied. Wolverton v. U. P. R. R. Co., 31 I. C. C. 23.

(j) Acceptance by a carrier of a shipment not properly crated or boxed, renders it liable for a resulting difference in rate unless misrepresentation was made, if the question is properly raised by the delivering carrier at the point of destination. Wolverton v. U. P. R. R. Co., 31 I. C. C. 23, 24.

(k) For many commodities the fiber box constructed, packed and sealed in accordance with the present classification rules will carry as well as the wooden package. Pridham Co. v. S. P. Co., 30 I. C. C. 117, 122.

(l) Some restrictions should be placed upon the insecure wooden con-

tainer. Pridham Co. v. S. P. Co., 30 I. C. C. 117, 123.

(m) In view of the fact that substitution of dunnage for more expensive boxes and crates and other packing material is of advantage to shipper, it is not inconsistent that the carrier should receive revenue for the total weight hauled. Dunnage Allowances, 30 I. C. C. 538, 543.

(n) It is not only the right but the duty of the carrier to decline shipments which are not so prepared or packed as to render them safe for transportation. Dunnage Allowances, 30 I. C. C. 538, 542.

(o) If shippers elect to dispense with the use of boxes, crates and other packing, upon the full weight of which carriers would receive freight charges, carrier offering equipment which would otherwise adequately take care of shipment is entitled to revenue for the gross weight transported. Dunnage Allowances, 30 I. C. C. 538, 545.

(p) Carriers not obligated to prepare shipments for transportation. Dunnage Allowances, 30 I. C. C. 538, 542.

(q) It is not only the right but the duty of the carrier to decline shipments which are not so prepared or packed as to render them safe for transportation, Dunnage Allowances, 30 I. C. C. 538, 542.

(r) Rating in southern classification on cocoa butter, in bags or bales, found unreasonable to the extent that it exceeded rating on same commodity in boxes or barrels. Traffic Bureau of Knoxville, Tenn., v. A. & V. Ry. Co., Unrep. Op. A-559.

(s) There is no doubt that the cost of handling a commodity packed in bags or bales is somewhat greater than when packed in boxes or barrels. Traffic Bureau of Knoxville, Tenn., v. A. & V. Ry. Ry. Co., Unrep. Op. A-559.

(t) The rating in southern classification of first class on cocoa butter in boxes or barrels is sufficiently high to permit the inclusion of the same commodity, packed in bags or bales. Traffic Bureau of Knoxville, Tenn., v. A. & V. Ry. Co., Unrep. Op. A-559.

(u) Rating on commodities packed in bags or bales ordinarily may well be reasonably higher than on same commodities packed in boxes or barrels. Traffic Bureau of Knoxville, Tenn., v. A. & V. Ry. Co., Unrep. Op. A-559.

(v) Twenty per cent charge above third-class rates on baking powder in fiberboard containers held unreasonable. Reparation awarded. Sea Gull Specialty Co. v. Baltimore Steam Packet Co., Unrep. Op. A-619.

(w) Ratings on potatoes in different kinds of containers from different parts of Florida should be uniform, unless special conditions require a diversity. Reparation denied. Wagner & Sons v. F. E. C. Ry. Co., Unrep. Op. A-678.

(x) Rates on coffee to Birmingham, Ala., and Nashville, Tenn., should be upon same basis as to containers. Merchants' & Manufacturers' Asso. v. L. & N. R. R. Co., Unrep. Op. A-680.

(y) Complainants assailed the rates of $3.67½ (1½ times first class) on scoured wool when shipped in compressed bales and $4.90 (double first class) when uncompressed in sacks, from Chicago, Ill., to Utah common points as unreasonable and discriminatory. On certain manufactured woolen goods the commodity rate between the points involved was $1.50; the first-class rate on others $2.45; the any-quantity rate on wool in grease, uncompressed, Provo, Utah, to Chicago, $2.00. In re Transportation of Wool, Hides and Pelts, 25 I. C. C. 185, the rate on scoured wool, uncompressed, from Albuquerque, N. Mex., to Boston, Mass., was fixed at 188 per cent of that on wool in grease, uncompressed. HELD, that rates on scoured wool compressed in bales, between Chicago and Utah common points should not exceed $2.25 in carloads, minimum 13,500 lbs., subject to rule 6-B western classification; and $3.00 in less than carloads. Reparation awarded. Knight Woolen Mills v. C. & N. W. Ry. Co., 32 I. C. C. 490.

(z) Increased use of fiber containers said to have resulted in increased number and amount of claims for damage. Rates on Boots and Shoes from Boston, Mass., 31 I. C. C. 154, 158.

(aa) Rates on cotton not shown to be unlawful or unjustly discriminatory as applied to bales of high density. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C., 458.

IV. COMPARATIVE RATINGS.

See Comparative Rates.

A. Analogous Articles.

See Supra, §7 (h), (i); Infra, §22; Advanced Rates §5 (3),

18 (7), (c); Differentials, §6 (a), §8 (a), (r); Evidence, §12, §31; Long and Short Hauls, §5 (k).

§17. In General.

(a) The tendency of the Commission has been to classify the various petroleum products to a limited extent and to establish lower rates on such low-grade products as fuel oil, road oil, etc., than are contemporaneously maintained on the higher grade of products. Fairmont Creamery Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 661, 662.

(b) Complainant, a syrup manufacturer at St. Joseph, Mo., attacked the rate of 23½c, yielding a ton-mile revenue of 1c, equivalent to a carload revenue of $204 per tank car and $96 per box car, on shipments of raw glucose from Chicago to St. Joseph, a distance of 469 miles, as unreasonable and discriminatory because: (a) the same rate was charged on syrup, the manufactured product; (b) the rate on glucose was 70 per cent greater than that on corn, its raw material, while between other points the spread was much less; and (c) higher rates were charged on glucose than other commodities that could not be transported at so low a cost. The rate of 18½c from Clinton, Ia., to St. Joseph, was also attacked. Glucose is valued at about 15 per cent above corn; and corn syrup, which is merely glucose flavored with refiner's syrup, sells for 40 per cent more than glucose. In the South and East glucose takes a lower rate than syrup, but west of the Missouri River the rates are the same, thus enabling Chicago competitors to ship syrup into St. Joseph at the same rate complainant must pay on his raw material. There were other manufacturers of corn syrup west of the Mississippi, none of whom, however, joined in the complaint, and the price of glucose being arbitrarily determined by a so-called trust, it was probably true that any reduction in the rate would simply result in diminishing their revenues, without being of any help to complainant. In State of Iowa v. A. C. L. R. R. Co., 24 I. C. C., 134, the rate on glucose from Chicago to New York Harbor was reduced from 24c to 20c, yielding 4.38 mills per ton mile for a haul of 912 miles. HELD, that the rate of 23½c from Chicago to St. Joseph was unreasonable, and a rate of 18½c, yielding 7.8 mills per ton mile, prescribed for the future. Rate from Clinton also to be readjusted. National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673.

(c). Higher rate on salt in packages than on salt in bulk neither unreasonable nor unduly discriminatory. Gottron Bros. Co., v. W. R. R. Co., 28 I. C. C. 38, 42.

(d) Fifth-class rating on sulphate of potash and muriate of potash in carloads not found unjustly discriminatory as compared with Class E on kainit and other fertilizers in carloads. German Kali Works, Inc. v. A. T. & S. F. Ry. Co., 28 I. C. C. 223.

(e) Classification must be by analogy and comparison. German Kali Works, Inc. v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 225.

(f) Analogous articles take fourth class in less than carloads and fifth class in carloads, which is not an improper relation. German Kali Works, Inc. v A. T. & S. F. Ry. Co., 28 I. C. C. 223, 229.

(g) Shipment of ammonia compressors, condensers, and receivers with oil traps and other appurtenances held to have been entitled to rating under machinery n. o. s. k. d., in pieces. United Refrigerator & Ice Machine Co. v. C. & N. W. Ry. Co., 28 I. C. C. 439, 441.

(h) Sugar and coffee are not like kinds of traffic within the meaning of section 2. Traffic Assn. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 487.

(i) Gluten feed possesses about the same nutritive value and sells for about the same price, for stock-feeding purposes, as do many articles which are classified as grain products. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 553.

(j) In the past the same rate was applied on grain and the product manufactured from grain. Of late the rate upon the product has been somewhat higher, and a separate rate provided for articles known as by-products. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 552.

(k) Complainant attacked the commodity rates on prepared roofing, in sheets, compared with the lower rates on it when shipped in rolls. Prepared roofing is shipped either in cylindrical rolls containing about 108 sq. ft. wrapped in thick paper, or as "asphalt shingles," oblong

pieces 8 by 12 inches, packed in fiber cartons, each carton containing 480 pieces. It is not practicable to load cylinders more than 40,000 lbs. to the car, while cartons will load 80,000 lbs. to the car. The value of the two articles is substantially the same and the purpose to which they are put is the same. In Western Classification Territory, where no commodity rate exists, both move as fourth class in less than carloads and fifth class in carloads. But nearly every considerable movement of prepared roofing is covered by a special commodity tariff. The commodity rate on prepared roofing between Chicago and St. Paul is 10c per 100 lbs., while the fifth-class rate, under which asphalt shingles move, is 20c. The rate from Chicago to the Missouri River is 16c for prepared roofing, while 27c is the fifth-class rate. HELD that defendants were practicing an undue discrimination by imposing a higher charge for the transportation of shingles than for rolls, and that the rate on shingles should not exceed that on rolls Patent Vulcanite Roofing Co. v. A. & W. Ry. Co., 28 I. C. C. 610.

(l) Complainant attacked the rate of 35c per 100 lbs. on wagon wood and plow beams, in the rough, from Fayette Junction, Ark., to Huntsville and Austin, Tex., as unreasonable to the extent that such charges exceeded the rate of 23c on lumber. Defendant's tariff provided a rate of 35c, applicable to "wagon wood, plow beams and handles, bent felloes, in the rough, sawed to dimensions (not further finished)." The shipments consisted of pieces of oak, hickory and other woods of various small dimensions, invoiced as oak tongues, hickory axles, rough tongues, hawns, reaches, bolsters, axles and plow beams. All the pieces were rough sawed, except 150 pieces, termed reaches which were planed on two sides. The pieces described as plow beams were sawed slightly curved on one side. The value of wagon wood is substantially greater than that of lumber, but there appeared to be no essential transportation differences between the two. HELD, that until carriers promulgate a properly classified list, free from unjust discrimination, it is unreasonable and discriminatory to force wagon wood and plow beams, in the rough, to bear higher rates than are imposed for like service upon many analogous manufactured wood articles which move at lumber rates. Sligo Iron Co. v. St. L. & S. F. Ry. Co., 28 I. C. C. 616.

(m) Complainant attacked the class D rating on cement silo staves in carloads from Kansas City, Mo., to points in Kansas, Nebraska, Colorado and Oklahoma, as unreasonable. Cement silo staves are slabs of concrete used in the construction of the walls of silos. Full sized staves weigh 57 lbs. each, and load 44,000 lbs. per car. They are analogous to and of about the same value as cement building blocks. In Western Classification cement building blocks were rated Class E, minimum weight 36,000 lbs., while cement silo staves, receiving no specific rating, were prior to June 30, 1913, rated Class B with certain other cement articles. On that date they received a specific rating of Class D, minimum weight 30,000 lbs. No transportation reason existed why cement staves should not be given as low a rate as cement blocks, nor why they should not, in view of their greater density and heavier loading, be accorded a lower rating than wooden staves. HELD, that the application of the Class D rating on carload shipments of cement silo staves by complainant to points on defendant's lines in Kansas, Nebraska, Colorado and Oklahoma was unreasonable, to the extent they exceeded the Class E rating, minimum weight 36,000 lbs. Reparation awarded. Wallingford v. A. T. & S. F. Ry. Co., 30 I. C. C. 19.

(n) Complainant, a box manufacturer, attacked the rate of 13c on lumber trimmings C. L. from Odanah, Wis., to Rockford, Ill. Defendant having no specific rate on trimmings, the shipments were inspected by its agent at destination, and the lumber rate applied. Defendant maintained two rates on fuel wood between the points in question, 7c and 9c, according to weight of carload. Lumber trimmings consist of pieces of various shapes and sizes, averaging in length about 20 inches, and upon receipt are sorted, about 60 per cent being used in box manufacture and the rest sold for fuel. It is worth about $8 per ton, or about half as much as lumber used for the same purpose. Fuel wood has no other commercial value, and sells for about $1.50 to $2.00 per cord of 2,400 lbs. The Wisconsin state rate on trimmings between Odanah and Rockford would have been 10.4c, had the shipment been intrastate. HELD, that the rate attacked was unreasonable, to the extent

that it exceeded 10.5c. Reparation awarded. Green Bros. Box & Lumber Co. v. C. & N. W. Ry. Co., 29 I. C. C. 473.

(o) The rate on ties should not exceed the rate on lumber of the same kind Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701, 702.

(oo) First-class rating, applicable to peroxide of hydrogen, from St. Louis, Mo., to Denver, Colo., found unreasonable to the extent that it exceeded second-class rating, and reparation awarded. Standard Pharmacal Co. v. C. R. I. & P. Ry Co., Unrep. Op. A111.

(p) Tank wagon part of road-making machine and charges should not have been assessed as an independent item. Minneapolis Threshing Machine Co. v. M. & St. L. R. R. Co., Unrep. Op. A117.

(q) Second-class rate applicable to shipment of "pressed steel doors" properly applied, instead of rate applicable to "steel plate doors," and complaint dismissed. West Co. v. E. R. R. Co., Unrep. Op. A142.

(r) Allegation that same rating should be given caster bolts and shanks as bolts, screws, iron nuts, hooks, nails and iron castings, not sustained. Faultless Caster Co v. M. P. Ry. Co., Unrep. Op. A143.

(s) Allegation that same rating be given unglazed tile slabs as roofing tile. not sustained. Ludowici-Celadon Co. v. C. & N. W. Ry. Co., Unrep. Op. A144.

(t) Complainant is not subjected to undue discrimination because there is a lower rate on cow or field peas than on California peas or lima beans. Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A148.

(u) Automobile radiators, used for cooling water after the explosion in gas cylinders, not found entitled to same rating as machinery n. o. s. Auto Vehicle Co. v. P. Co., Unrep. Op. A152.

(v) Automobile axles not found entitled to same rating as carriage and wagon axles. Auto Vehicle Co. v. P. Co., Unrep. Op. A152.

(w) Automobile steering gear, and parts thereof, not found entitled to same rating as machinery n. o. s. Auto Vehicle Co. v. P. Co., Unrep. Op. A152.

(x) There is no objection to a reasonable differential between the rates on material and the manufactured products thereof. Plain sheet steel and corrugated sheet steel bear to a degree the relation of raw material and products. Rulofson & Co. v. P. Co., Unrep Op. A153.

(y) Rates on steel bars from Johnstown and Pittsburgh, Pa., to Harriman, Tenn., found to be unjustly discriminatory as compared with rates on steel plate. Reduction ordered and reparation denied. Harriman Mfg. Co. v. S. Ry. Co. Unrep. Op. A-164.

(z) Complainant seeks the application of the rating for "machinery n. o. s." upon shipments of certain metal automobile parts. HELD, upon rehearing, that they are not entitled to the rating sought. Previous decision affirmed. Auto Vehicle Co. v. C. M. & St. P. Ry. Co. Unrep. Op. A166.

(aa) Allegation that air-brake equipment is entitled to same rating as "brakes and fastenings" not sustained. National Brake & Electric Co. v. C. & N. W. Ry. Co., Unrep. Op. A-168.

(bb) Complainant seeks the application of the rating for "machinery n. o. s." upon shipments of certain metal automobile parts. HELD, upon rehearing, that they are not entitled to the rating sought. Previous decision affirmed. Auto Vehicle Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-168.

(cc) Rates on l. c. l. shipments of motorcycles in Western Classification Territory found to have been unreasonable to the extent that they exceeded one-and-one-half times the first-class rates contemporaneously in effect and on carloads from Mississippi River to Des Moines, Iowa, to the extent that it exceeded the first-class rate contemporaneously in effect. Morler v. O. S. L. R. R. Co., Unrep. Op. A-195.

(dd) One-and-one-half times first-class rate applied to shipments of iron automobile frames found unreasonable in that it exceeded second-class rate applicable to fly wheels, crank shafts, chains, n. o. s., brake drums, springs, axles (without gear), and iron and steel axle housings. Keats Auto Co. v. S. P. & S. Ry. Co., Unrep. Op. A-202.

(ee) Classification of coffin stock found to be relatively unreasonable and unduly prejudicial and should not exceed rating on lumber. Board of Rail-

road Commissioners of Iowa v. A. T. & S. F. Ry. Co., Unrep. Op. A-222.

(ff) Forty-gallon fire extinguisher with wheels found to have been entitled to rating applicable to fire extinguishers n. o. s. Reparation awarded. Pacific Fire Extinguisher Co. v. N. Y. N. H. & H. R. R. R. Co., Unrep. Op. A-231.

(gg) Shipment of angles, rods and girders not found entitled to rating applicable to structural iron. Rate applicable to dredging machinery properly assessed. Yuba Construction Co. v. S. St. P. M. & O. Ry. Co., Unrep. Op. A-239.

(hh) Higher rate in effect on cast-iron stove reservoirs when packed in bundles than when packed in boxes, barrels or crates, not found unreasonable. Loewenberg & Going Co. v. O. W. R. R. & N. Co., Unrep. Op. A-361.

(ii) Shipment of sawmill machinery from Canton, Ohio, to Kelly, La., not found to have been completely knocked down and boxed so as to be entitled to second-class rating. Metropolis Bedding Co. v. B. & O. R. R. Co., Unrep. Op. A-368.

(jj) Rates on pancake flour from St. Joseph, Mo., to San Francisco and Los Angeles, Cal., found unreasonable and unduly prejudicial as compared with rates on buckwheat and corn flour. Davis Milling Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-398.

(kk) Complainant attacked the carload rates on raw leather for use in the manufacture of harness, from Ohio and Mississippi River crossings and Gulf ports to Macon, Ga., as discriminatory compared with rates on shoe sole leather. Prior to 1906 there were no commodity rates on raw leather to Georgia points, the rates being fourth class on carloads and second class on less than carloads. Fourth-class rates from Cincinnati were 2c below the rates to Macon, and second class rates were 3c lower. A shoe factory being established at Atlanta, a special commodity rate on carloads of shoe sole leather 11c lower than the fourth-class rate was accorded. Leather suitable for manufacture of harness moves to all other points in this section at class rates. Shoes are not manufactured at any point in the southeast except Atlanta, but harness is made at many points which would would be affected by a reduction in the rate on harness leather to Macon. Sole leather and other raw leathers are not used interchangeably, nor are they or the articles into which they are manufactured, competitive. HELD, that the rates complained of do not result in undue prejudice or disadvantage to the manufacturer of harness and kindred articles. Complaint dismissed. Chamber of Commerce, Freight Bureau, Macon, Ga., v. C. N. O. & T. P. Ry. Co., 30 I. C. C. 477.

(ll) Cancellation of application of North Carolina intrastate mileage scale of rates on tanbark from stations on the S. Ry. in South Carolina to North Carolina tanning points and placing of that commodity on same rate basis as lumber, found justified. Order of suspension vacated. Hans Rees Sons v. S. Ry. Co., 30 I. C. C. 585.

(mm) Barley, being a whole grain, is more properly rated with corn and oats than with corn chops. Malt Rates to Texas Points, 30 I. C. C. 385, 386.

(nn) Comparison of articles, to be of value must be analogous articles. Danciger v. P. C. C. & St. L. Ry. Co., 29 I. C. C. 99, 100.

(oo) Rate on hardwood does not include woods of value. Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120.

(pp) Complainant's contention that rates on thermos bottles were unreasonable as compared with rates on other bottles, not sustained. Mogenson-Wells Co. v. E. R. R. Co., Unrep. Op. A419.

(qq) Ordinarily same rate applies to all lumber, without reference to value or condition, and this rate frequently includes such manufactured products as doors, sash, etc., but there is no reason why lumber may not be classified. Green Bros. Box & Lumber Co. v. C. & N. W. Ry. Co., 29 I. C. C. 473, 475.

(rr) Rates on baled moss from Mather, Wis., to Chicago, Ill., found unreasonable insomuch as they exceed 12c. Barnard Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A421.

(ss) If no commodity rate is in effect, defendant would be required to establish a second-class rate on peas and beans. Memphis Freight Bureau v. U. S. E. Co., Unrep. Op. A424.

(tt) Higher rate on ground talc between East St. Louis, Ill., and Kansas City, Mo., is an undue prejudice inasmuch as it exceeds the rate on soapstone dust.

Eastern Talc Co. v. M. P. Ry. Co., Unrep. Op. A443.

(uu) Rates on crushed slate or slate dust from Poultney, Vt., to C. F. A. territory are prejudicial inasmuch as they exceed the rates on crushed feldspar. Central Commercial Co. v. D. & H. Co., Unrep. Op. A445.

(vv) There is not enough difference in the value of crushed slate or slate dust and crushed feldspar to justify a difference in the rates. Central Commercial Co. v. D. & H. Co., Unrep. Op. A445.

(ww) Scrap iron cannot be compared with lumber in order to substantiate the same rate thereon. Tennessee Lumber Mfg. Co. v. B. D. R. R. Co., Unrep. Op. A448.

(xx) Complainant's contention that the rate on candy was unreasonable as compared with the rate on cocoa, coffee, gelatine, baking powder, tea, etc., not sustained. Allen & Lewis v. C. B. & Q. R. R. Co., Unrep. Op. A453.

(yy) Rates on grain screenings unreasonable in so far as they exceed the rate on flour. Standard Grain & Milling Co. v. C. & N. W. Ry. Co., Unrep. Op. A454.

(zz) Double first-class rate on packages of tobacco because lead seals were used instead of metal ones, found unreasonable. Cowen-Heineberg Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A458.

(3a) Rates on motorcycles unreasonable from Springfield, Mass., to Spokane, Wash, in so far as they exceed the joint through rates, all rail. Spokane Cycle & Suply Co. v. S. I. Ry. Co., Unrep. Op. A461.

(3b) Tuto and rexo horns compared with other automobile horns and the present double first-class rate not found unreasonable. Dean Electric Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A464.

(3c) Rates on cross-ties should not exceed the rate on lumber of the kind from which the ties are made. Valley Lumber & Timber Co. v. W. M. Ry. Co., Unrep. Op. A465.

(3d) Rates on lumber from Dallas, Ore. to Weed, Cal., not shown prejudicial as compared with rates from other Oregon points. Dallas Lumber & Logging Co. v. S. P. Co., Unrep. Op. A475.

(3e) Complainant's contention that woven wire fencing should be accorded the same rate as wire, iron or steel, in bundles or coils, or on reels, and should be subject to the same minimum weight, not sustained. Orgill Brothers & Co. v. L. & N. R. R. Co., Unrep. Op. A483.

(3f) Complainant's contention that tank iron should take the same class as steel plates not sustained. Standard Oil Co. v. P. Co., Unrep. Op. A485.

(3g) Rates on motorcycles found unreasonable in so far as they exceed the first-class rate. Ballou & Wright v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A494.

(3h) Rates on grapefruit compared with the rates on oranges and lemons and the rates should not exceed the rates on said commodities. Ryan & Newton Co. v. N. P. Ry. Co., Unrep. Op. A495.

(3i) Hair waste should have taken the same rate as fertilizer material. Illinois Leather Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A497.

(3j) Double first-class rates on screens from New York, N. Y., to San Francisco, Cal., not shown to be unreasonable. Sloans v. S. P. Co., Unrep. Op. A509.

(3k) Double first-class rate on dynamite found unreasonable in so far as it exceeds the first-class rate. Tennessee Copper Co. v. L. & N. R. R. Co., Unrep. Op. A523.

(3l) Rates on crossties should not exceed the rates on lumber manufactured of like kind of wood. Duvall, Carter & Co. v. S. Ry. Co., Unrep. Op. A527.

(3m) Onions and potatoes sometimes are put in the same class. Payne v. G. N. Ry. Co., Unrep. Op. A544.

(3n) The same rates should be maintained on all kinds of lumber except those of such distinctly higher value as to be properly distinguishable. Lumber Rates, S. Ry. Points to Eastern Points, 31 I. C. C. 244, 254.

(3o) Complainant contended that the official classification ratings on dust arrester or collector outfits were unreasonable and unduly prejudicial. The drums and hoods of these outfits were made of galvanized steel, the heavier gauges being known as "plate" and the lighter as "sheet." Less than carload, when made of plate were rated first, second or third class, according to packing; when made of sheet, three times first, double first, or first class, according to packing.

Galvanized steel, unfabricated, was rated fourth class in less than carloads. The steel was increased in value from 12½ per cent to 33⅓ per cent in the course of fabrication. Unfabricated steel, flat, weighed from 400 to 500 lbs., while dust collector outfits, nested, averaged 26 lbs. Heating-furnace pipe rated third class, weighed from 8 to 11 lbs. per cu. ft.; stovepipe rated third class weighed from 50 to 53 lbs:, and galvanized iron conductor pipe rated second class weighed from 12 to 20 lbs. HELD, that the ratings complained of were not shown to be unreasonable nor to subject complainant nor its traffic to undue prejudice. Complaint dismissed. Dixie Mfg. Co. v. B. C. & A. Ry. Co., 31 I. C. C. 337.

(3p) Complainant attacked the rates on wrapping paper from Wisconsin and Michigan mills to Muskogee, Okla., as unreasonable and discriminatory, compared with rates to Kansas City and Joplin, Mo. The rate from Nekoosa, Wis. to Kansas City was 20c for 617 miles; to Joplin, 31c for 772 miles; to Muskogee, 51c for 871 miles. Rates from Munising, Mich., to Kansas City was 21c for 851 miles; to Joplin, 32c yielding 6.361 mills per ton-mile for 1,006 miles; to Muskogee, 52c, yielding 9.532 mills per ton-mile for 1,091 miles. Thus on a car weighing 40,000 lbs. the carriers earned $80 additional over that earned to Joplin on the additional haul of 85 miles to Muskogee. To Muskogee the rate on wrapping paper was 6c higher than that on news print paper, while to Kansas City and Joplin the rates on the two commodities were identical. HELD, that no reason appeared why wrapping paper should not take the same rate as news print paper to Muskogee. Carriers directed to maintain rates from Nekoosa and Munising not exceeding 34c and 35c, respectively. Reparation awarded. Adleta Paper Co. v. C. & N. W. Ry. Co., 31 I. C. C. 347.

(3q) In considering the question of the proper relation of flour and grain rates, the Commission has not attempted to lay down any fixed rule to govern all cases, but has in some instances approved equal rates on wheat and flour, in others has upheld uniform spreads, and in others varying spreads. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 629.

(3r) The practical difficulty in determining with certainty whether any given shipment, when made, is of one grade or another, is a reason, although not controlling, for applying the same rate to all grades. Molasses Rates to Knoxville, Tenn., 30 I. C. C. 613.

(3s) Class-D rating on cement silo staves found unreasonable in so far as it exceeded class-E rating on analogous articles. Wallingford v. A. T. & S. F. Ry. Co., 30 I. C. C. 19, 20.

(3t) While it may be true that malt rates may be scaled higher than barley rates, or even upon the same differential as flour over wheat rates, it does not necessarily follow that malt should take the same rate as flour. Malt Rates to Texas Points, 30 I. C. C. 385, 386.

(3u) Barley, being a whole grain, is more properly rated with corn and oats than with corn chops. Mail Rates to Texas Points, 30 I. C. C. 385, 386.

(3v) The territory lying west and south of Texas common point territory is known as differential territory, and to all points within, its rates are made by adding differentials to the common point rates. Brownsville, Tex., Class and Commodity Rates, 30 I. C. C. 479, 480.

(3w) Rates on roasted coffee should not exceed that on green coffee by more than 5 cents per 100 pounds. Brownsville, Tex., Class and Commodity Rates, 30 I. C. C. 479, 487.

(3x) Blackstrap should take same rate as all other grades of molasses. Molasses Rates to Knoxville, Tenn., 30 I. C. C. 613, 614.

(3y) The practical difficulty in determining with certainty whether any given shipment of molasses, when made, is of one grade or another, is a reason, although not controlling, for applying the same rate on all grades. Molasses Rates to Knoxville, Tenn., 30 I. C. C. 613, 614.

(3z) Rates on oak cross-ties from Spurlington and Campbellsville, Ky., to Cincinnati, Ohio, found unreasonable to the extent that they exceeded the rate on oak lumber. Shipp & Son v. L. & N. R. R. Co., Unrep. Op. A-557.

(4a) Rating in southern classification on cocoa butter, in bags or bales, found unreasonable and unjustly discriminatory to the extent that it exceeded rating on same commodity in boxes or barrels. Traffic Bureau of Knoxville, Tenn. v. A. & V. Ry. Co., Unrep. Op. A-559.

(4b) Rate on club-turned handles, in the rough, from West Point, Miss., to Cairo, Ill., should not exceed rate on lumber of kind from which handles are made. Clark-Danforth Handle Co. v. I. C. R. R. Co., Unrep. Op. A-570.

(4c) Rate on railroad ties from Wilton and Molus, Ky., to Cincinnati, Ohio, found unreasonable to the extent that it exceeded the rate contemporaneously in effect on lumber manufactured from the same kind of wood. Reparation awarded and reduction ordered. Johnson & Son v. L. & N. R. R. Co., Unrep. Op. A-576.

(4d) Rating of three times first class on ornamental screens in crates in western classification not found unreasonable as compared with rating of one-and-one-half times the first class in official classification territory. American Furniture Co. v. C. & E. R. R. Co., Unrep. Op. A-597.

(4e) Combination rate on grain screenings from Minneapolis, Minn., to South Bartonville, Ill., not found unreasonable as compared with lower through rate on wheat. Atwood-Stone Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-599.

(4f) Rates on wood silos compared with rates on lumber, special iron, and doors and frames. Reparation denied. Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-607.

(4g) Bridge iron and merchant iron generally take the same commodity rates. Canton Bridge Co. v. P. Co., Unrep. Op. A-612.

(4h) Rates on leather horse collar caps found unreasonable to the extent that they exceeded rate on "shoe findings." Reparation awarded. Van Voorhies & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-622.

(4i) Second-class rating on incubators, etc., from Higginsville, Mo., to Atchison, Kans., found unreasonable to the extent that it exceeded third-class rating, subject to rule 6-B of western classification. Reparation awarded. Leahy Mfg. Co. v. M. P. Ry. Co., Unrep. Op. A-625.

(4j) No classification accords to addressing machines a rating the same as to ordinary machinery. In southern and western classifications they are given the same ratings as scientific instruments. Reparation awarded. Montague Mailing Machinery Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-626.

(4k) Rates on hand agricultural implements from St. Louis, Mo., Thebes and Cairo, Ill., and Memphis, Tenn., to Little Rock, Ark., not found unreasonable as compared with agricultural implements other than hand. Merchants' Freight Bureau of Little Rock v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-633.

(4l) Cyanide of potassium and cyanide of sodium are packed alike for shipment and from a transportation standpoint differ only in value. Goldfield Consolidated Milling & Transp. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-644.

(4m) Rates on pulp wood from Deer River and other points in Minnesota to Superior, Wis., found to be unreasonable as compared with rates on saw logs. Reparation awarded. Curry & Whyte Co. v. G. N. Ry. Co., Unrep. Op. A-645.

(4n) Rate on cotton-seed hulls is lower than rate on corn shucks, hay, bran, and prepared stock feed. Advance justified. Rates on Cotton Seed Hulls, Unrep. Op. A-654.

(4o) Rates on "compo-board" not found unreasonable as compared with pulp-board and fibreboard. Northwestern Compo-board Co. v. A. & W. Ry. Co., Unrep. Op. A-663.

(4p) Rates on carbon black from West Va., and Okla., to Calif. terminals not found unreasonable as compared with rates on carbon flour, carbon dust and printers' ink. Calif. Ink Co. v. M. O. & G. Ry. Co., Unrep. Op. A-664.

(4q) Rates on "wall cleaning compound" not found unreasonable as compared with rates on dry cleaning powders and flour paste. Climax Cleaner & Cleveland Paste Co. v. B. & O. R. R. Co., Unrep. Op. A-668.

(4r) Rates on printing paper from Kalamazoo, Mich., to Rock Island, Ill., not found unreasonable as compared with rates on other commodities. King Paper Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-673.

(4s) Rates on hair felt from Kansas City and Chicago to Milwaukee, not found unreasonable as compared with rates on cattle hair. American Hair Felt Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-674.

(4t) Rates on potatoes compared with rates on sweet potatoes in various kinds of containers. Reparation denied

on potatoes in hampers from Miami, Fla., to Chicago, Ill. Wagner & Sons v. F. E. C. Ry. Co., Unrep. Op. A-678.

(4u) Discrimination against interstate and in favor of intrastate pulp wood traffic not attributable to special and justifying conditions would be unwarranted and undue. However, the same is not true as to commodities, which although of the same parent stock and subject to many like transportation conditions, are commercially distinct, individually designated for transportation purposes and distinguishable in other essentials. Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C. 162, 168.

(4v) While the carriers may make voluntarily a distinction between two articles or between two grades of the same article in the direction of a reduction in the rate on one article or grade, it does not follow that they may be compelled to make such distinction. What carriers may do is one thing; what they ought to be required to do is quite another. Rates on Blackstrap Molasses, 32 I. C. C. 176, 178.

(4w) The principle established by the Commission in Iowa State Board of R. R. Com. v. A. & E. R. R. Co., 28 I. C. C. 563, for the application of a rule of percentages of the first-class rate in determining what the rates on the lower classes should be, was not intended for universal application at this time. Rates between Shreveport and Texarkana, 32 I. C. C. 180, 183.

(4x) Complainant attacked the rates on lard substitute from Greenville, Tex., to points in Oklahoma, Arkansas, Louisiana, Mississippi and New Mexico to the extent they exceeded the rates on packing house products. The rates from Greenville to Oklahoma, Arkansas, Louisiana and Mississippi were the same as on packing house products from Fort Worth Tex., the same rates applying from Sherman and Dallas, Tex. The packing house products rates from Fort Worth were the mileage scale rates established, in Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160 and 23 I. C. C. 656. To points in New Mexico the rates on lard substitutes always had been higher than the rates contemporaneously in force from Fort Worth and Dallas. Dallas is east of Fort Worth, Sherman is north of Dallas and Greenville is northeast of Dallas and southeast of Sherman. The short-line distances between these points are from 31.07 miles between Dallas and Fort Worth to 83 between Fort Worth and Greenville. Complainant's product is a compound of oleo stearine, beef fat from which the oil has been extracted, and refined cotton-seed oil. It is slightly less valuable than lard but it is used for the same purposes. The same article is manufactured at Sherman, Dallas, Houston and Fort Worth. The manufacturers located at the three last named points compete with complainant at points in Oklahoma, Arkansas and elsewhere. For rate making purposes lard substitute is a packing house product. Complainant and its competitors in the neighborhood procure stearine from Omaha, South Omaha, Kansas City and Cincinnati. Stearine is a packing house product and the rate scale prescribed in the case cited above should apply from Kansas City. HELD, that since lard substitute is in all rate making essentials a packing house product, it should take the same rates as packing house products from the same or similarly situated points and that the mileage scale of rates on packing house products contained in 22 I. C. C. 160 and as modified in the supplemental report in this case, 23 I. C. C. 656, should apply on lard substitute from Greenville as a distinct point of origin and not as a common point with Dallas and Fort Worth. Reparation denied. Texas Refining Co. v. A. & V. Ry. Co., 32 I. C. C. 192.

(4y) Complainant attacked the rates on veneer and built-up wood, C. L., between Wausau, Wis. and points in the southern peninsula of Michigan, to the extent that veneer of 1-16-inch and upward be accorded the lumber rate and that built-up wood be given a rate not more than 1c in excess of the lumber rate. The rate on 1-16-inch veneer, C. L., from Wausau to Grand Rapids, Mich., as a typical point was 21.5c per 100 lbs., made up of the combination on Milwaukee or Manitowoc. Under the Official Classification, veneers of more than 1-16-inch thickness take the lumber rating of sixth class, while those of less thickness take fifth class. Complainant contended that it is not reasonable to make the dividing line between the two classes at this thickness, and that a more reasonable division would be just below 1-16-inch. The value of a ton of veneer 1-16-inch thick is about $37.67; ⅛-inch, $37.46; less than 3-16, $33.88. Veneers of less than 1-32-inch are manufactured from selected logs and have a much higher value. Ordinary

birch lumber is worth about one-half as much as veneer 1-16-inch thick. If, therefore, veneers were to be classified on the basis of value a threefold classification would be logical, the highest class embracing those from 1-20 to 1-36-inch, the second from 1-16 to ⅛-inch, and the third including veneers 3-16-inch and upwards. The Southern and Western Classifications place veneers ⅛-inch thick with those of lesser thickness and give the lumber classifications to all over ⅛-inch thick. Veneer loads about as heavy as lumber. Built-up wood is made by gluing together several thicknesses of veneer or by covering ordinary wood with one or more thicknesses of veneer. It is more valuable than veneer. Lumber, built-up wood and veneer are made from the same kind of logs, except the veneer under 1-16-inch thick. Veneer and built-up wood move in small quantities as compared with lumber. The thicker veneers are somewhat less valuable than the thinner grades. Veneer has been classed higher than lumber since the publication of Official Classification No. 1 in 1887 and listed at fifth class since 1891. Shipments from Wausau to points in Michigan are governed by this classification as are those of complainant's competitors in New England and Michigan. To grant the relief asked for probably would necessitate a general readjustment. HELD, the fact that a classification has long existed and is accorded wide recognition is persuasive of its reasonableness, and that veneer loads as heavily as lumber and can be moved at the same cost is not controlling, where it appears veneer and built-up woods are more valuable than lumber and move in smaller quantities. It would seem that if fifth and sixth class, respectively, represent the proper spread between veneer and lumber, the spread between these rates from Wausau to points in the southern peninsula of Michigan is reasonable. Although when lumber is given a commodity rate, this spread becomes greater, varying from 2½c to 8c, this is not controlling where such commodity rates on lumber have been established by reason of water competition. Considering the greater volume of the movement of the lumber and the water competition, it would not seem that veneer is entitled to an equally low rate. Therefore, the rates complained of have not been shown to be unreasonable or unduly discriminatory. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 205.

(4z) Complainants attacked the rates on hardwood lumber, C. L., other than gum and other valuable foreign woods, from points south of Memphis in Mississippi on the I. C. and Y. & M. V. R. Rs. to New Orleans, to the extent they exceed the rates of 11c and 10c on gum lumber. The points of origin were from Gearhart, 225 miles from New Orleans, to Marinette, 364 miles, the rates ranging from 11c to 12c, except that from Charleston it was 13c; the revenue per-ton-per mile from 9.77 mills to 6.25 mills, being 7.97 mills from Charleston. The rate of 12c on all kinds of lumber from Memphis to New Orleans was also attacked to the extent it exceeded 11c. This rate applied alike to export lumber and that for domestic use. Prior to December 20, 1912, the rate on all kinds of lumber from Memphis to New Orleans was 10c, having been made effective pursuant to the order in Thompson Lumber Co. v. I. C. R. R. Co., 13 I. C. C., 657. The rates on gum lumber from points south of Memphis were in general lower than the rates on oak lumber. Effective December 20, 1912, the carriers published a rate from Memphis to New Orleans of 12c on all kinds of lumber and it was proposed to raise the rates on gum to the level of the rates on oak, as far as that could be done under the existing fourth section order. Under a general order the carriers were prohibited from increasing any fourth section discrimination in favor of the long haul or from creating any such discrimination where none existed, although under their pending application they were relieved from liability for existing violations. Therefore when the rates on gum from intermediate points were the same as from Memphis, they could not be made higher. In some cases the rate on oak was as high as 13c, and in those cases the rate on gum could not be brought to the level of the oak rate without reducing the latter. Defendants felt that they could not reduce any of their rates on oak, and the only way they could place gum on a parity with oak was by raising the rate on gum. Lumber Rates from Memphis to New Orleans, 27 I. C. C., 471, it was found that the carriers had justified the increase from Memphis to New Orleans from 10c to 12c and the rate of 12c was expressly found reasonable. As to the proposed increases in the rates on gum from intermediate points, it was found that from points on the I. C. R. R. and Y. & M. V. Ry. south of Memphis, east of the Mississippi River and on and north of the line of the Southern Ry. in Mississippi the proposed in-

creases had been justified only to the extent that they made rates not higher than 11c, and that from points south of the line of the So. Ry. in Mississippi the proposed increases had not been justified. The Commission case held there was no justification for higher rates from intermediate points than from Memphis, and as some of the existing rates from intermediate points were higher than 12c, those rates were reduced. The effect of the order was to increase the revenues from Memphis business from $85,699 to $102,830 annually, taking the business for 1912 as a basis, while effecting a reduction from points south of Memphis from $168,677 to $164,091, the net increase being $12,545 per year. The reduction from present revenues by bringing the rates on oak from points south of Memphis down to the level of the gum rates would be $6,645, still leaving the annual revenues of the defendants $5,900 in excess of what they were prior to the order in lumber rates from Memphis to New Orleans, supra, while if the relief sought is granted, the revenues of the carrier would be less by $2,660 than they were prior to the order in that proceeding. In the report in that case it was stated that the I. C. R. R. was entitled to receive substantially the revenues it then received from the part of its lumber transportation involved in that proceeding. It now appears that a reduction in the rates on oak lumber to the level of the rates on gum lumber would still leave the carrier a margin of almost $6,000 per year over the revenues it received from the traffic prior to the former order. HELD, no reason being offered for reducing the rate of 12c from Memphis that was not fully considered before, the complaint in this respect is denied. Rates south of Memphis. The rates on oak from points south of Memphis were not expressly approved in the former proceeding. It is clear in that case the Commission reached the conclusion that maximum rates on gum should not exceed the maximum rates on oak, and it was plainly stated the Commission did not approve of the action of the carriers of bringing rates on different kinds of lumber to a common level by making increases only. It appeared the Y. & M. V. Ry. is expensive to operate and maintain; that a number of points of origin are branch line points; that the road runs through an agricultural state; that the traffic of that part of the state which it traverses contributes but little to the revenues of the carriers; and that the cotton industry and the sugar industry are now suffering from adverse conditions. HELD, that a higher rate than 11c from the territory north of the So. Ry. in Mississippi or any higher rate than 10c from the territory south would be unreasonable. Bellgrade Lumber Co. v. I. C. R. R. Co., 32 I. C. C. 403.

(5a) In this case, 26 I. C. C. 37, the Commission prescribed rates on live stock from Arizona points to Los Angeles, Cal., and held that rates on sheep and goats in double-deck cars should be the same as those on fat cattle. On rehearing it appeared that while double-deck cars were heavier than cattle cars by 1,500 lbs., the average loading weight of the former was but 18,600 lbs., as against 25,150 lbs. per 36-ft. car loaded with cattle. Defendant owned 100 double-decked cars but used them exclusively in competing with other lines in northern California. HELD, (1) that defendant's rates on sheep and goats in double-deck cars between the points involved was unreasonable, and that such rates should not exceed the rates on fat cattle (2) that $2.50 might be added for a branch-line haul and $5.00 per car for hauls over two or more lines; (3) rates on sheep for feeding should not exceed 85 per cent of rates prescribed, and (4) that when a double-deck car was ordered, and two single-deck cars furnished in lieu thereof, it should be at the rate for the double-deck car, provided the shipment could have been loaded therein. Am. Natl. Live Stock Asso. v. S. P. Co., 32 I. C. C. 515.

(5b) Flaxseed should properly take a higher rate than wheat. Railroad Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 652.

(5c) No reason why wrapping paper should not take same rate as newsprint. Adleta Paper Co. v. C. & N. W. Ry. Co., 31 I. C. C. 347, 349.

(5d) In some cases rates on wheat are slightly higher, usually by half a cent, than on coarse grain. Sioux City Terminal Elevator Co. v. C. M. & St P. Ry. Co., 31 I. C. C. 482, 483.

(5e) Mineral water, vinegar and cider take fifth-class rate and are said to be analogous to beer. Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545.

(5f) Starch does not constitute such like kind of traffic with corn meal and other corn products as is contemplated under section 2. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 594.

(5g) Flaxseed should properly take a higher rate than wheat, it being peculiarly liable to loss in transit. R. R. Comrs. of Montana v. B. & A. P. Ry. Co., 31 I. C. C. 641, 652.

(5h) Complainant attacked the rates on grain from Montana points to St. Paul and Minneapolis, Minn., and to Seattle and Tacoma, Wash., and Portland, Ore., as unreasonable. Though rates on all grains except flaxseed had not been increased since 1910, and wheat rates had been reduced, freight charges were high owing to remoteness from markets. The rate on flaxseed was increased in 1913 to make it 2c higher than the wheat rate. The rate of 30c per 100 lbs. from Montana stations to Minneapolis being deducted from the price, 82c in 1912, left the farmer but 64c. The price of wheat in Montana had fallen from 86c in 1908 to 64c in 1912. Between 1909 and 1913 the wheat acreage increased from 350,000 to 870,000 acres and the number of bushels raised from 6,252,000 to 20,673,000. Rates asked from points in eastern Montana to Minneapolis were lower than existing rates from points in western North Dakota. Via the G. N. Ry., the N. P. Ry., and the C. M. & St. P. Ry., for average distances to St. Paul of 1,041, 1,054½, and 960 miles, respectively, the average rates were respectively 30½c, 30.89c and 29.66c per ton-mile 5.866, 6.836 and 6.179 mills; but their net operating revenues per mile in Montana were respectively $4,083, $5,475 and $2,369, the C. M. & St. P. Ry., operating through a sparsely settled region. The C. M. & St. P. Ry. had in entering the country merely met the rates of the other lines. The rates from Mondac, Poplar and Nashua, Mont., to Minneapolis were 20c, 21c and 23c for distances of 610, 672 and 728 miles, as compared with rates of 21½c, 25c and 29c from Tripp, Platte and Presho, S. D., to Chicago, Ill., for distances of 610, 667 and 720 miles. On an average haul of 1,054 miles from Montana to St. Paul, the per-car earnings were $185.34, as compared with $82.82, on an average haul on North Dakota traffic of 388 miles. In 1913 flaxseed was worth $1.15 per bushel in Montana, wheat 66c. HELD, (1) that comparison of the rates assailed with those in other states did not show the Montana rates to be unreasonable; (2) that the disparity in ton-mile earnings between the C. M. & St. P. Ry. and the N. P. and G. N. was justified by the fact that the former was constructed at a recent date through a relatively unproductive region; (3) that the 2c differential of flaxseed over wheat was justified by the greater value of flaxseed and its peculiar liability to loss in transit; (4) fourth section violations of the Great Falls-Billings branch of the G. N. Ry. ordered corrected. Complaint dismissed. Railroad Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641.

(5i) Rate on scrap iron from Des Moines, Ia., to Chicago, Ill., not found unreasonable as compared with rate on second-hand rails. Ohio Iron & Metal Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-694.

(5j) Complainant attacked the rates on pulp wood in carloads from Deer River, North End, and other Minnesota producing points to Superior, Wis., as unreasonable and discriminatory compared with rates on saw logs. The rates on pulpwood from Deer River and North End, distant from Superior 121 and 38 miles, respectively, were 6c and 3.5c; on saw logs 6c and 2.5c. There was no material difference in the service performed in transporting the two commodities. HELD, that the rates on pulpwood were unreasonable in so far as they exceeded the rates on saw logs. Reparation denied. Curry & Whyte Co. v. G. N. Ry. Co., Unrep Op. No. A-645.

(5k) Rates on common glassware from Cincinnati, Ohio, to Knoxville, Tenn., not found unreasonable as compared with rates on plate glass, jelly glasses, fruit jars and bottles. Traffic Bureau of Knoxville v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-695.

(5l) Carload and less-than-carload rates on cotton factory sweepings between Charlotte, N. C., and Athens, Atlanta and Augusta, Ga., not found unreasonable as compared with rates on cotton and cotton linters. Barndardt Mfg. Co. v. S. Ry. Co., Unrep. Op. A-698.

(5m) Contention that acetate of lime should have taken the rate applicable to lime not sustained. Mount Pleasant Fertilizer Co. v. E. J. & S. R. R. Co., Unrep. Op. A-702.

(5n) Acetate of lime is not a fertilizer material, and contention that

rate on latter should have applied from Louisville as a factor of the through rate from East Jordan, Mich., to Mount Pleasant, Tenn., not sustained. Mount Pleasant Fertilizer Co. v. E. J. & S. R. R. Co., Unrep. Op. A-702.

(5o) Rates on passenger automobiles from eastern defined territory to California terminals not found unreasonable as compared with rates on freight automobiles and self-propelled fire-fighting apparatus. Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-708.

(5p) Rates on sawn building marble from Manchester, Vt., to Port Morris, N. Y., not found unreasonable as compared with rates on rough and building granite from points in Maine. Norcross-West Marble Co. v. Rutland R. R. Co., Unrep. Op. A-713.

(5q) Rates on bar iron from New Albany, Ind., to Owensboro, Ky., made on basis of fifth-class in Official Classification territory not found unreasonable as compared with C. F. A. or Southern Classification territories. Owensboro Wagon Co. v. S. Ry. Co., Unrep. Op. A-714.

(5r) The Southern Classification provides for the application of the "special iron" rate on carload shipments only; and sixth-class rate found to have been properly applied on less-than-carload of steel bars from Jacksonville to Ocala, Fla. Ocala Iron Works v. B. & O. R. R. Co., Unrep. Op. A-715.

(5s) Classification rating on interior house trimmings in western classification not found unreasonable or prejudicial. Union Trim and Lumber Co. v. G. R. & I. Ry. Co., Unrep. Op. A-716.

(5t) Rate on scrap iron from Kansas City to Chicago not found unreasonable as compared with commodities of equal or greater value. Sonken-Galamba Iron & Metal Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-718.

(5u) "Salt" rate applied to bulk rock salt from Kanapolis, Kan., to Sioux City, Ia., via Kansas City, found unreasonable and reparation awarded. Morton Salt Co. v. U. P. R. R. Co., Unrep. Op. A-720.

(5v) Rate on cypress lumber from Pensacola, Fla., to Lynchburg, Va., found unreasonable as compared with rate on yellow pine and other lumber Reparation awarded. Florida Cypress Co. v. L. & N. R. R. Co., Unrep. Op. A-725.

(5w) Rates on scrap iron from Sioux City, Ia., and Sioux Falls, S. D., not found unreasonable as compared with rates on commodities of higher value which are not shown to be in competition with scrap iron. Livingston Bros. v. C. M. & St. P. Ry. Co., Unrep. Op. A-729.

(5x) Iron shipping blocks are in the nature of a transportation facility, but rates on same returned are not found unreasonable as compared with returned empty carriers, containers, etc. Berrine Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-730.

(5y) Classification rating on iron as applied to returned shipments of iron shipping block for bracing automobiles not found unreasonable. Perrine Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-730.

(5z) Western Classification rating on parts of furnaces when shipped together as a complete furnace, higher than on parts of furnaces when shipped separately, not found unreasonable. Campbell Heating Co. v. A. T. & S. F. Ry. Co. Unrep. Op. A-749.

(6a) A higher rate on barbers' and waiters' duck coats than on duck clothing, N. O. S. from Chicago, Ill., to Seattle and Tacoma, Wash., found to be unduly discriminatory. Reparation awarded on count of overcharges. Friedlander & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-761.

(6b) No justification is shown for excepting barbers' and waiters' duck coats from the term "duck clothing". Reparation awarded on shipments from Chicago, Ill., to Seattle and Tacoma, Wash., on account of overcharges. Friedlander & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-761.

(6c) A relationship whereby sash and door rates are lower than the lumber rates requires clear affirmative proof of its reasonableness. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 339.

(6d) Sash and door rates should show a fixed relation to lumber rates. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 339.

(6e) Complainant attacked defendant's carload rates on wooden porch columns from Ittabena, Miss., to Cleveland

and Warren, Ohio, and related points, as unreasonable and unduly prejudicial. Carload rates on gum lumber from Ittabena to Cleveland and Warren were 25 and 26c, respectively, while the rates on gum porch columns were 8 1-2c higher. HELD, that the rates on porch columns were unreasonable to the extent that they exceeded those on lumber of the same kind by more than 3c per 100 lbs. Reparation denied. Fetterman Bowl & Column Mfg. Co. v. S. Ry., 33 I. C. C. 514.

(6f) Complainant attacked the rates on toasted wheat biscuit and toasted wheat crumbles in carloads in western trunk line and southwestern territories as unjustly discriminatory compared with rates on uncooked cereals, including cream of wheat, post tavern porridge, and other breakfast foods. Rates from Chicago, Ill., to Kansas City, Mo., Omaha, Nebr., Denver, Colo., and Oklahoma City, Okla., were 25, 25, 65, and 51c on the cooked products, and 13 3-4, 14 3-4, 44 3-4, and 27 1-2c on the uncooked. The two classes of products competed commercially, were of substantially the same value, the carrier's risk was about the same, and moved at the same rates to Pacific Coast Terminals. HELD, that the difference in carload rates complained of was unjustly discriminatory. Rates on uncooked products prescribed as maxima. Kellogg Toasted Corn Flake Co. v. A. T. & S. F. Ry. Co., 33 I. C. C. 534.

(6g) No reason appears why rates on produce should be lower than upon other commodities taking same class rates. Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 15.

(6h) Monumental granite rating not to exceed rating on dressed and polished building granite. Nebraska State Railway Comm. v. C. V. Ry. Co., 32 I. C. C. 41.

(6i) Deciduous fruit rates not discriminatory as compared with lower refrigeration rates on citrous fruit, vegetables, etc. Pacific Fruit Exchange v. S. P. Co., 32 I. C. C. 48, 49.

(6j) Contention that differences in rates on coffee and on sugar and rice are not justified, not sustained. Rates on Coffee, 32 I. C. C. 90, 92.

(6k) Discrimination resulting from lower rates on saw logs moving intrastate to Duluth than on pulp wood to same for transportation in Wisconsin and Michigan is not essentially unlawful. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 168.

(6l) No reason why blackstrap should not take rate applicable to all other grades of molasses. Rates on Blackstrap Molasses, 32 I. C. C. 176, 178.

(6m) Lard substitute should take same rates as packing-house products from same or similar points of origin in Texas. Texas Refining Co. v. A. & V. Ry. Co., 32 I. C. C. 192, 194.

(6n) Rates on other grain usually bear a fixed relation to rates on wheat. New York Produce Exchange v. N. Y. C. & H. R. R. Co., 32 I. C. C. 212, 213.

(6o) Lack of uniformity in relation of rates to different points on diversified commodities not sufficient to establish unlawfulness. Commercial Club of Joplin, Mo. v. M. P. Ry. Co., 32 I. C. C. 226.

(6p) Contention that lumber rates should be applied to veneer, not sustained. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265.

(6q) It does not necessarily follow that veneer should be accorded a rate as low as the lumber rate. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268.

(6r) Rates applied to motorcycles should not exceed rates contemporaneously applicable on bicycles. Griffing v. C. & N. W. Ry. Co., 32 I. C. C. 283, 285.

(6s) Opinion that rates on hides and pelts should not exceed the rates on packing-house products, confirmed. Crowdus Bros. v. A. T. & S. F. Ry. Co., 32 I. C. C. 355, 358.

(6t) Live stock and live poultry not analogous, but there is some analogy between live poultry and fresh meats. Rates on Live Poultry in Western Trunk Line Territory, 32 I. C. C. 380, 383.

(6u) Carriers required to reduce rates on oak lumber to the level of the rates on gum lumber. Bellgrade Lumber Co. v. I. C. R. R. Co., 32 I. C. C. 403, 408.

(6v) Former decision that rates on stock cattle should not exceed 85 per cent of rates on fat cattle, adhered to. American National Live Stock Asso. v. S. P. Co., 32 I. C. C. 438, 443.

(6w) Rates on sheep or goats in dou-

ble-deck cars from Arizona to California should not exceed rates on fat cattle. American National Live Stock Asso. v. S. P. Co., 32 I. C. C., 515, 518, 519.

(6x) Transportation conditions seem to justify a higher rate on flour than on wheat. Kansas-California Flour Rates, 32 I. C. C. 602, 604.

(6y) Rate on porch blinds, carloads, canceled and first-class rate applicable to less-than-car loads applied. Third-class rate subsequently restored. Reparation awarded on consignment from Bush Docks, Brooklyn, N. Y., to Toronto, Canada, which moved ad interim. Gregg & Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. A-768.

6z) Cottonseed foots usually take lower rates than cottonseed oil. Reparation awarded on cottonseed foots from Charlotte, N. C., to Louisville, Ky., on basis of a subsequently established rate of 27 cents. Swift & Co. v. S. A. Ry., Unrep. Op. A-787.

(7a) Rate on inedible animal grease from Los Angeles, Cal., to Kansas City, Kans., higher than on tallow found unreasonable and reparation awarded. Sulzberger & Sons Co. v. S. P. Co., Unrep. Op. A-790.

(7b) Inedible animal grease could not be designated as tallow owing to regulations of Bureau of Animal Industry. Sulzberber & Sons Co. v. S. P. Co., Unrep. Op. A-790.

(7c) Higher rates on tag-board from Carthage and Brownsville, N. Y., to Baltimore, Md., Philadelphia and Hershey, Pa., Richmond, Va., and Washington, D. C., than on wrapping paper and newspaper not found unjustly discriminatory. Carthage Sulphite Pulp & Paper Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. A-801.

(7d) Rates on tag-board not found unreasonable, though subsequently accorded same rates as wrapping and newspaper. Carthage Sulphite Pulp & Paper Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. A-801.

(7e) Rates on "spotless cleanser" cleaning compound from Bristol, Va.-Tenn., to various points not found unreasonable as compared with rates on laundry soap, soda ash, bicarbonate of soda and other articles classified as cleaning compounds. Reynolds Corporation v. N. & W. Ry. Co., Unrep. Op. A-803.

(7f) Rate of $1.50 per 100 pounds on gas cooking stoves from various points east of Missouri River to San Francisco, Cal., found unlawful to extent it exceeded $1.30 applying on other cooking stoves. Reparation awarded. Boardman Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-835.

(7g) Rate on buckwheat and corn flours may properly exceed the rate on wheat flour to California terminals by not more than 10 cents per 100 pounds, minimum 50,000 pounds. Westbound Transcontinental Rates on Buckwheat and Corn Flour, Unrep. Op. A-841.

(7h) Only in limited sense is there competition between buckwheat and corn flours and wheat flour. West-bound Transcontinental Rates on Buckwheat and Corn Flour, Unrep. Op. A-841.

(7i) Charges assessed on wool on carload and less than carload basis found unreasonable to the extent that they exceeded "lot" basis. Reparation awarded. American Woolen Co. v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A-846.

(7j) Rates on windmills and towers from Superior, Wis., to Washington, Iowa, not found unreasonable or unduly prejudicial as compared with rates on agricultural implements and other articles not analogous. Duplex Mfg. Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-858.

(7k) Class rates applied on chicken coops, hens' nests and waterers, from Keokuk, Iowa, to San Francisco and Los Angeles, Cal., not found unreasonable. Articles not included in term "stamped ware" upon which commodity rate applies. Weber Kirch Mfg. Co., v. C. B. & Q. R. R. Co., Unrep. Op. A-859.

(7l) Rates on chicken coops, hens' nests and waterers from Keokuk, Iowa, to San Francisco and Los Angeles, Cal., not found unreasonable as compared with articles included in the term "stamped ware." Weber Kirch Mfg. Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-859.

(7m) Rate on mattocks, picks, sledges and crowbars from Wheeling, W. Va., to San Antonio, Tex., not found unreasonable as compared with rates on railway material, etc. Reparation awarded for overcharge. Peden Iron & Steel Co. v. S. P. Co., A. S. S. Lines, Unrep. Op. A-869.

(7n) Term "creosote" included "creo-

sote oil" and "tar oil." 75-cent rate on creosote, in tank cars, from Galveston to San Miguel and Fresno, Cal., not found unreasonable. Coalina, Water & Electric Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-871.

(7o) Rate on creosote, in tank cars, from Galveston, Tex., to San Miguel and Fresno, Cal., not found unreasonable as compared with other commodities shipped in tank cars. Colinga Water & Electric Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-871.

(7p) Rate of 30c on friction board from Hayes, N. H., to Indianapolis, Ind., found unreasonable to the extent that it exceeded the rate of 19c applicable to wood pulp board. Reparation awarded. Indianapolis Chamber of Commerce v. B. & M. R. R., Unrep. Op. A-886.

(7q) Rate on friction board from Hayes, N. H., to Indianapolis, Ind., found unreasonable to the extent that it exceeded the rate applicable to wood pulp board. Reparation awarded. Indianapolis Chamber of Commerce v. B. & M. R. R., Unrep. Op. A-886.

(7r) Commission has uniformly fixed the malt rate at a slight differential over the barley rate. Gate City Malt Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-890.

(7s) Following decision in Griffing v. C. & N. W. Ry. Co., 25 I. C. C., 134, rate on motorcycles, l. c. l., in western classification was reduced to one and one-half times first-class. Becker v. O. W. R. R. Co., Unrep. Op. A-917.

(7t) Classification held unreasonable not to have included box shooks with articles which took lumber rate. Reparation awarded. Arizona Lumber & Timber Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-920.

(7u) Classification held unreasonable not to have included box shooks with articles which took lumber rate. Reparation awarded. Arizona Lumber & Timber Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-920.

(7v) Rate on motorcycle from Wagon Works, Ohio, to North Yakima, Wash., found unreasonable to the extent that it exceeded one and one-half times first class. Case held open for proof. Cycle Motor Co. v. N. P. Co., Unrep. Op. A-925.

(7w) Complainant cannot consistently contend that candy cough drops should be classified with drugs, as candy cough drops are rated second class while drugs are first class. Inland Empire Biscuit Co. v. G. N. Ry. Co., Unrep. Op. A-931.

(7x) Complaint cannot consistently contend that candy cough drops should be classified with drugs, as candy cough drops are rated second class while drugs are first class. Inland Empire Biscuit Co. v. G. N. Ry. Co., Unrep. Op. A-931.

(7y) Rate on l. c. l. shipments of candy cough drops from Poughkeepsie, N. Y., to Spokane, Wash., not found unreasonable or unduly prejudicial. Inland Empire Biscuit Co. v. G. N. Ry. Co., Unrep. Op. A-931.

(7z) Charges on asphalt shingles from Arga, Ill., to Logan, Utah, collected upon basis of carload minimum and commodity rate, held to have been unlawful to the extent that they exceeded charges upon basis of l. c. l. class rate applied to actual weight of shipment. Reparation to be awarded. Berrum v. I. H. B. R. R. Co., Unrep. Op. A-959.

(8a) Cancellation of commodity rate on brewers' rice from New Orleans to Dallas, Fort Worth, San Antonio, and Galveston, Tex., and applying rate applicable on clean rice, not justified. Rates on Brewers' Rice from New Orleans, La., to Points in Texas, Unrep. Op. A-950.

(8b) Complainant attacked the rates on low grade cedar logs in carloads from points on the N. C. & St. L. Ry., in Alabama and Tennessee to Atlanta, Ga. as unreasonable and discriminatory. A carload of low-grade cedar logs, weighing 38,952 lbs., was worth from $150.00 to $170.00; a carload of common logs, weighing 40,000 lbs., brought from Montague and Stevenson, Ala., and Jasper, Tenn., for distances of 172.7, 175.3, and 178 miles were on cedar logs and lumber, 15, 14, and 15c; on common logs 8c; and on common lumber 13 1-2, 10, and 13 1-2c. The comparative rates on low-grade cedar logs for the same distances to defendant's local slat factory points were 7 2-3, 7 3-4, and 7 3-4c. HELD, that the rates attacked were not unduly prejudicial, but were unreasonable to the extent that they exceeded the rates on common logs between the same points. Reparation denied. Nebraska Bridge Supply & Lumber Co. v. N. C. & St. L. Ry., 35 I. C. C. 86.

(8c) Complainants attacked the rates

on low-grade cedar logs in carloads from Wauhatchie, Tenn., New England, Sulphur Springs and Rising Fawn, Ga., and Keener, Portersville, Collinsville, and Argo, Ala., to Atlanta, Ga., as unreasonable and discriminatory in comparison with the rates on common logs. Joint rates of 16 1-2, 17, and 17 1-4c applied from New England, Rising Fawn, and Sulphur Springs, via the A. G. S. R. R. and S. Ry. to Atlanta, for distances of 152, 163, and 168 miles. In the general territory involved the rates on cedar logs and lumber were generally 3c higher than those on common logs and lumber. HELD, that the rates attacked were unreasonable to the extent that they exceeded he rates on common logs between the same points. Reparation awarded. Nebraska Bridge Supply & Lumber Co. v. A. G. S. R. R., 35 I. C. C. 90.

§18. Specific Comparisons.

(a) A mere showing of the fact that the rating in one classification territory is different from the rating on the same article in another territory does not establish that either of the ratings are unreasonable or unduly prejudicial. Dixie Mfg. Co. v. B. C. & A. Ry. Co., 31 I. C. C. 337, 340.

§20. Classification Territories.

See Infra, §22 (d); Evidence, §13 (l), (k); Reasonableness of Rates, §7½ (g).

(a) As defined in the tariff Iowa is divided by a line running east and west, the northern one-third being known as Peoria territory, and taking rate between Mississippi River and Chicago. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 199.

(b) Mississippi River territory between the Mississippi and the Missouri, practically the entire State of Iowa being included. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 198, 199.

(c) Missouri River territory embraces points upon that river, a considerable amount of territory to the west and very limited territory to the east. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 197.

(d) Commission recognizes right of Western carriers to maintain higher classification and higher rates than prevail in the East. German Kali Works, Inc. v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 224; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 563, 568; National Syrup Co. v. C. & N. W. Ry. Co., 28 I C. C. 673, 676.

(e) Class rates to and from the lower Mississippi River crossings are published under separate classifications. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 578.

(f) Official classification governs traffic from the East to Nashville and Memphis, while southern classification governs on traffic to Atlanta, Chattanooga and Knoxville. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 488.

(g) Conditions differ in different classification territories and the rates in one territory are not of controlling importance in determining the reasonableness of rates in another territory on the same kind of traffic. Oliver v. O. G. & N. E. Ry. Co., Unrep. Op. A496.

(h) The Colorado common points, so called, are Denver, Colorado Springs, Pueblo, Walsenburg and Trinidad. They take the same inbound rates from all eastern points. In the distribution of products from these common points the rates are so adjusted as to give each point a local distributing territory at lower rates than prevail from any other point to that territory, and after reaching what is conceived to be a reasonable distance from the common point, the rates from the particular points become the same as from Denver. Pueblo Commerce Club v. D. & R. G. R. R. Co., 31 I. C. C. 133, 135.

(i) There is no single fixed point which can be designated "Chicago." It includes, roughly speaking, a territory about 30 miles long and 15 miles wide, commonly called the Chicago Switching District. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 73.

(j) Southeastern territory is bounded on all four sides by navigable water and on the north also by strong lines of railroad of high traffic density maintaining rates materially lower than the southern lines can usually afford to accept. Fourth Sections Violations in the Southeast, 30 I. C. C. 153. 156.

(k) While a uniform classification throughout the United States would doubtless tend to simplify the interrela-

tions of tariffs and perhaps go far to level existing inequalities, it does not appear that the desired end would be attained by spreading western classification over official classification territory. Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582, 587.

(l) Differences in industrial and traffic conditions in official and in western classification territories are such that rates in the territory west of the Mississippi River may reasonably be made higher than in the more densely populated east. Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582, 587.

(m) Mere fact that rating in one classification territory is different from rating on same article in another does not establish that either are unreasonable. Dixie Mfg. Co. v. B. C. & A. Ry. Co., 31 I. C. C. 337, 340.

(n) The mere fact that ratings on oriental rugs in Official and Southern classifications differ from ratings in the Western is not conclusive that latter is unreasonable. W. & J. Sloane v. S. P. Co., Atlantic S. S. Lines, Unrep. Op. A-699.

(o) Rating in Western Classification on oriental rugs is dependent upon value; while in Official it is dependent upon packing and not upon value, and in Southern it is made without regard to value. Not found unreasonable. W. & J. Sloane v. S. P. Co., Atlantic S. S. Lines, Unrep. Op. A-699.

(p) If it is just and reasonable that lumber and lumber products take the same rate in one territory, it must be unjust and unreasonable or unjustly discriminatory to maintain and charge a differential in the rates on these respective classes of traffic in another territory, unless the difference in treatment of the same products in different territories has been clearly established by affirmative testimony. If it is impracticable to establish a lumber list, complete or partial, in one territory, it must be equally impracticable to do so in another territory. In other words, carriers should effect uniformity in treatment in the classification of lumber and lumber products throughout the country. Anson, Gilkey & Hurd, Co. v. S. P. Co., 33 I. C. C., 332, 341.

(q) That a higher basis of rates on scoured wool obtains in western than in official or southern territory not controlling. Knight Woolen Mills v. C. & N. W. Ry. Co., 32 I. C. C. 490, 491.

(r) Ratings in one classification territory, however, are not conclusive of the reasonableness or unreasonableness of the ratings in another. Blackburn-Warden Co. v. I. C. R. R., 34 I. C. C., 58, 59.

(s) A mere showing of the fact that the rating in one classification territory is different from the rating on the same article in another territory does not establish that either of the ratings are unreasonable or unduly prejudicial. Western Newspaper Union v. A. & R. R. R., 34 I. C. C. 326, 328.

(t) Particular ratings in one classification are not conclusive proof that higher ratings in another are unreasonable. Louden Machinery Co. v. A. T. & S. F. Ry., 34 I. C. C. 383, 385.

§21. Follow-lot Shipments.

(a) Both Official and Western Classifications provide, that when parts or pieces constituting one or more complete articles are shipped at one time, by one shipper, to one consignee and destination, they will be charged at the rate provided for the complete article. Seth Thomas Clock Co. v. N. Y. N. H. & H. R. R. R. Co., Unrep. Op. A-213.

(b) Shipment consisting of ice machine and galvanized iron ice molds, loaded on five different cars, found to constitute one shipment and entitled to rate applicable to machinery. Frick Co. v. C. V. R. R. Co., Unrep. Op. A362.

V. REASONABLENESS AND APPLICATION.

§22. In General.

See Reasonableness of Rates, §28 (c).

(a) Protestant, engaged in shipping condensed milk, in barrels, half barrels and kegs, from southeastern Wisconsin to Illinois points, complained that a proposed tariff made no provision for the shipment of its product, as it only provided a commodity rate for condensed milk packed in cans, boxed, and therefore its product would be subjected to the higher class rate. HELD, that the tariff should be amended so as to include milk, condensed or evaporated, in barrels, half barrels or kegs. Condensed Milk Rates

Between Points in Illinois and Wisconsin, 29 I. C. C. 43.

(b) Complainant protested against the rating of three times first class on the transportation of fiber furniture in less than carloads from Jackson, Mich., to points in other states governed by Official Classification as unreasonable and discriminatory compared with a rating of double first-class in Western Classification Territory. The rating of three times first class applied to rattan, willow, reed, grass and bamboo furniture. Fiber furniture is not so liable to damage in transit as wooden furniture, and has an average weight of 3.5 lbs. per cubic foot, being 50 per cent heavier than reed furniture and still heavier than willow or rattan. Fiber articles range in weight from 1.8 to 10.6 lbs. per cubic foot, and in value from 8c to $1.67 per cubic foot. A carload of reed rockers weighs about 3,000 lbs., while a carload of fiber rockers weighs about 5,000 lbs. HELD, that the rating of three times first class is unreasonable. Rate of double first class prescribed. Michigan Seating Co. v. Grand Trunk Western Ry. Co., 29 I. C. C. 123.

(c) Complainant attacked the first-class rate on L. C. L. and fourth-class rate on C. L. shipments of empty target projectiles under the Southern Classification, from Richmond, Va., to Fort Mifflin, Pa., as unreasonable compared with the rates for projectiles under the Official and Western Classifications and as compared with the rates on machinery in all three classification territories. Shells load from 37,000 lbs. to 105,000 lbs. to the car, the average being 73,137 lbs. The shells involved are 12 and 14 inches in diameter, with a copper band sunk into and projecting slightly above its surface, to take the rifling of the gun. In the base end is screwed a steel base plug. Under Southern Classification, projectiles are rated first class, L. C. L., and fourth class, C. L., whether empty or solid; in Official Classification, empty projectiles are rated second class, L. C. L., and fifth class C. L., minimum weight 36,000 lbs.; in Western Classification, empty or solid projectiles are second class, L. C. L., and fourth class, C. L., minimum weight 30,000. lbs. Machinery was rated fifth class under Official Classification, class A under the Western, and sixth class in the Southern; but was usually rated in the lower classes only on the parts of the machine and not on the whole machine, and when the completed article, such as agricultural implements or anvils, which were rated low, it was for the purpose of giving such necessities a rating on which the traffic would move, or because iron and steel constitute one of the staple commodities, the movement of which is immense; whereas, the movement of projectiles is insignificant. Twelve-inch target shells are worth $35, and fourteen-inch, $54; armor piercing or loaded, the values advance to $279.40 and $500.00. Articles alleged to be analogous include architectural fronts, car axles, carriage or wagon material, car-spring plates, nails, n. o. s., plain, or brass or copper coated; bar steel, brass or copper covered, coated or plated; all rated from second to less than sixth class in less than carloads, and from fourth class to class A in carloads. HELD, that the classification of projectiles in Southern Classification was not unreasonable. Complaint dismissed. United States v. R. F. & P. Ry. Co., 29 I. C. C. 702.

(d) Commission recognizes right of western carriers to maintain higher classification and higher rates than prevail in the East. German Kali Works, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 224.

(dd) Complainant attacked the ratings on corrugated iron and steel culverts in Western Classification Territory. The ratings, applicable on culverts, set up, in packages or loose, nested or not nested, are: (1) straight or mixed carloads, any diameter, minimum 20,000 lbs., fourth class; (2) less than carloads, 16-gauge or thicker, inside diameter over 48 inches, double first class; over 24, and not over 48 inches, first class; 24 inches or less, second class; thinner than 16-gauge, any diameter, double first class. Corrugated iron or steel culverts are generally used for drainage on highways, and largely sold to county commissioners. Shipments are made by carload or less than carload, the larger tonnage moving the latter way. Sizes run from 8 to 84 inches in diameter and 10 to 30 feet in length. The sheet is as thin as 32-gauge, 18-gauge being used only for culverts 10 inches or less in diameter. Culverts may be loaded in box or flat cars. Less-than-carload shipments are usually of two or more sizes, and in most cases it is possible to nest them. The 18-gauge is 1-20 inch thick, the 16-gauge being 1-16, or 20 per cent heavier. The value of culverts de-

pends on weight, being generally 4¼c per lb. The sheet from which they are manufactured costs in the neighborhood of 3c per lb. In Official Classification Territory, culverts in carloads are rated fifth class, minimum 24,000 lbs. The highest gauge in common use, 16-gauge. was made the minimum thickness on which the lower ratings would apply, though a certain amount of 18-gauge culverts of the smaller sizes are manufactured and take a higher rating. HELD, that the present ratings on corrugated iron and steel culverts do not appear unreasonable. Klauer Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 508.

(e) The Commission considered the proposed cancellation of the fourth-class rates on less-than-carload shipments of cured meat in sacks from St. Louis, Kansas City and certain other packing-house centers to Arkansas points. The cancellation of these rates, which constituted an exception to the regular second-class rates imposed in the Western Classification on this commodity, would result in an average increase of 60 per cent in the rate. But the change would affect cured meat only when in sacks, the fourth-class rate still applying where the commodity was packed in barrels, boxes. crates or pails. The purpose of the proposed change was to realign this traffic to the basis of the rating on similar traffic to or from points other than those in question, as suggested by the Commission. HELD, that the proposed change in classification should be allowed to become effective. Order of suspension vacated. Rates on Packing-house Products, 28 I. C. C. 599.

(f) Change in rating on cured meats in sacks from fourth to second class permitted. Rates on Packing-house Products, 28 I. C. C. 599, 601.

(g) Double first-class rates for the transportation of addressographs from Chicago, Ill., to Portland, Ore., found to have been unreasonable to the extent that they exceeded one and one-half times the first-class rate contemporaneously in force. Gill Co. v. O.-W. R. R. & N. Co., Unrep. Op. A211.

(h) To hold that existing class rates on commodities to which storedoor delivery applied are, by its discontinuance, rendered unreasonable to the extent of the cost of the service, would necessarily develop a relative inequality of rates as to articles excepted from the classes. Merchants & Manufacturers Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 392.

(i) Complainant attacked the classification of bakery goods, L. C. L., from points in Oregon to points in California, Idaho, Montana and Washington. Bakery goods consist of crackers, wafers, sweet cakes, etc., and are classified in the Western Classification in less than carloads as follows: In cartons, in crates, in fibre or metal cans with or without glass fronts, in crates and in shipping baskets with solid wooden covers, first class; in shipping baskets with basket-work covers, one and one-half times first class; in barrels, boxes or wheeled carriers, second class. Shipments between points in Oregon, California, Washington, Idaho and Montana take the Western Classification ratings, except shipments in tin in crates from Portland to Oregon points south of Portland on the main lines of the Southern Pacific Co., which take second class instead of first, and shipments from Portland to points in Oregon, Idaho and Montana on the Oregon Short line, and to Utah common points, which take commodity rates identical with the third class rates between the same points. The goods involved sell at prices ranging from 5.5c to 20c per lb. and in the case of a few articles as high as 35c or 40c per lb. Soda crackers are the staple of the line and sell for approximately 8c per lb. All of these articles are shipped in all of the different packages used and the packages are of approximately the same weight and value. The average weight of bakery goods was shown by complainants to be 13.5 lbs. per cubic foot and the classification unit 18.6, and by the carriers the weight 14.9 lbs. and the classification unit 19.65. The standard Western Classification first, second and third class units, derived by averaging the units for various articles so classified, were, first class, 20.64; second class, 12.72; third class, 8.28. (In the Matter of Suspension of Western Classification No. 51, 25 I. C. C. 442.) The individual classification units for articles weighing from 5 to 15 lbs. vary greatly. On articles rated first class the units vary from 10.63 to 119.94; second class, 11.6 to 51.20; third class, 9.41 to 40.76, and fourth class, 26 to 34.10. On the basis of these units, bakery goods could be rated first, second or third class with equal propriety. However, almost everywhere in Western Classification territory,

except the extreme northwest section specified in the complaint, third class or equivalent commodity rates apply. HELD, classification should apply universally in the territory which it purports to cover, and exceptions should be made by individual carriers only for exceptional reasons. No reasons exist for classifying bakery goods differently in different parts of Western Classification territory, especially since it is shown that the packages shipped by complainant and the service rendered by defendants is the same as in other parts of the territory, and the rates are unreasonable to the extent they exceed third class. Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188.

(j) The fact that a classification has long existed and is accorded wide recognition is persuasive of its reasonableness. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 267.

(k) Complainants attacked the rates charged for transportation of motorcycles from Springfield and Armory, Mass.; Chicago and Aurora, Ill.; Milwaukee, Wis.; Tulsa, Okla.; Kansas City, Mo.; Topeka and Coffeyville, Kan., and St. Paul, Minn., to destinations in Western Classification territory as unreasonable. The less-than-carload rate for the haul in such territory was two and one-half times first class and that for carload lots exceeded the first-class rate. HELD, that such rates were unreasonable to the extent that they exceeded charges that would have accrued at the first-class rates for carload shipments and at one and one-half times first class, L. C. L. Reparation denied. Griffing v. C. & N. W. Ry. Co., 32 I. C. C. 283.

(l) Complainant attacked the rates on liquid tanning extract in tank cars from Knoxville, Tenn., to Michigan destinations as unreasonable and discriminatory compared with rates to points in Illinois, Wisconsin, New York, Pennsylvania and Ontario. The comparative rates on this commodity in cents per hundred pounds appeared as follows

From Knoxville, Tenn.:

	Miles.	Rate.
Average—Michigan points	676	30.9
Average—Illinois and Wis.	635	25.8
Average—New York, Pa., and Ontario	746	25.6
From Lynchburg, Va.:		
Average—Michigan points	833	25.9
Average—Illinois and Wis.	817	25
Average—New York, Pa., and Ontario	564	23.4
From Bristol, Va.-Tenn.:		
Average—Michigan points	741	28.9
Average—Illinois and Wis.	708	28
Average—New York, Pa., and Ontario	735	25.6

The rates charged were the combinations of local rates to and from the Ohio River, except that in the case of four Michigan points the Southern Railway publishes through rates which are themselves exactly equal to the existing combinations. The distance from Knoxville to Cincinnati is 291 miles and the rate is 12c. It was admitted this rate was reasonable, as it compares favorably with other rates in the same territory, and it is stated that the rate was established primarily to encourage the through movement to destinations beyond and is therefore in effect a proportional rate. The unreasonableness, it is alleged, is due to the rates charged north of the river (The southern carriers accept less than 12c to the river, it is stated, only when it is necessary, as on through shipments to the East, to meet competition through the Virginia gateways). The complaint as to the rates north is based largely upon a difference in classification. Compared with other rates for like distances the Knoxville-Cincinnati rate appeared less. In Official Classification tanning extract is fifth class and in southern classification sixth class. To Michigan the Official Classification applies, while to Chicago and Ohio River territory the Southern Classification applies. For example, the rate from Cincinnati to Detroit, 274 miles, is 14c, the fifth-class rate, and to Chicago, 190 miles, 12c, the sixth-class rate. If fifth class were applied to Chicago, the rate would be 15c, or if sixth class were applied to Detroit, the rate would be 11c, a difference of 3c in each case. "Chicago and Ohio River Territory" referred to herein comprises the points taking Chicago rates from the Ohio River. To these points there are two sets of rates, one governed by the Official Classification, being the local rates on commodities for which proportional rates are not provided; and the other governed by the Southern Classification and being proportional rates on certain commodities originating at certain points south of the Ohio River. Traffic to the Michigan destinations moves via Cincinnati or via Louisville. It is stated that in making the sixth class rate, Southern Classification, apply to these points, the interested carriers are merely meeting the

competition of carriers at other Ohio River crossings who maintain the proportional rates referred to above. It is not shown that complainant meets with competition of other southern manufacturers and discrimination is not alleged between southern producing points. It is not shown that tanneries more favorably located than the ones in Michigan take advantage of the cheaper rates by buying at Knoxville. The tanning extract involved is made of chestnut wood and 95 per cent of the movement goes to the Michigan points. HELD, since it was evident that the mere removal of the discrimination from Knoxville would not benefit complainant, unless the rate to the Michigan points was reduced, the discrimination between rates to the Chicago and Ohio River territory and those to the Michigan destinations is not undue or unjust. **Rates to Points East of the Pittsburgh-Buffalo Line.**—The rates to Berlin, Ont.; Cattaraugus, N. Y., and Corry, Pa. are on the same basis as the rates complained of. To Hamilton, Ont., the rate for a short time has been on a basis somewhat lower, but it is stated that the carriers intend to restore it to the combination basis as formerly. To certain other points the rates are made the same as those via the direct routes through the Virginia gateways. HELD, it is the conclusion of the Commission that in meeting this competition there is not unjust discrimination. **Classification Question.**—It is apparent that the question presented resolves itself into one of the propriety of classifying tanning extract fifth class in the Official Classification. In 1907 the rates to Illinois and Wisconsin destinations were increased from fifth to sixth class simultaneously with the same increase for the movement from points in Trunk Line territory to points in C. F. A. territory. The rates from the Ohio River to Illinois and Wisconsin destinations included in the Chicago and Ohio River territory have always been upon the sixth class basis. The fifth class basis on liquid tanning extract is at present applied in Western and Official classifications. Complainants' shipments are made in tank cars, for the use of which carriers pay ¾c per mile. The average loading is slightly over 80,000 lbs. The average distance to the points involved is 676 miles. To Grand Rapids, Mich., to which about 50 per cent of the shipments move, the average revenue per car was shown to be $231.79. It was also shown that on shipments in tank cars claims for loss and damage are few. It is stated that the extract is not inflammable, explosive or otherwise hazardous. The movement from Knoxville to Michigan destinations is about 200 cars per year. The Official Classification rate on sulphuric acid, denatured alcohol, molasses, linseed oil and other commodities of greater value than tanning extract is fifth class. There are many different tanning agents. A great deal of imported material is used in connection with the domestic for tanning purposes. All of the tanning agents are given fifth class in Official Classification, except hemlock and oak bark, which are sixth. Materials used for tanning are also used for dyeing. It appeared it might be impracticable to make any successful differentiation from a classification standpoint between chestnut wood extract and the many other tanning agents. HELD, it would appear that the only way in which the question presented could be considered would be from the standpoint of a possible change in the classification throughout the entire territory, and in the present record it is not found that complainants have shown that such change should be made. Complaint dismissed. Tanners' Supply Co. v. L. & N. R. R. Co., 32 I. C. C. 394.

(m) Complainants assailed the double first class rating prescribed by southern classification on grapes in baskets, l. c. l., as unjust and unreasonable. It appeared that because of the frailty of the baskets, such shipments were peculiarly liable to damage and carriers were forced to load and unload them exclusively by hand. HELD that defendants had justified the existing rating. Complaint dismissed. Blackburn-Warden Co. v. I. C. R. R., 34 I. C. C., 58.

(n) Complainant attacked the rates of 95c per 100 lbs., minimum 40,000 lbs., on corrugated galvanized sheet iron in carloads from Middletown, Ohio to Pacific Coast points as unreasonable and discriminatory compared with the rate of 85c charged on plain galvanized sheet iron. Corrugated sheets loaded as heavily as flat sheets, were of substantially the same bulk, were put to the same use, and differed little in value. For a distance of 2500 miles, approximately the distance involved, the 95c rate yielded 7.6 mills per ton-mile and 19c per car mile for a car of 50,000 lbs., as compared with 6.8 mills per ton-mile and 17c per car mile under the 85c rate. HELD, that the 95-

cent rate attacked was not shown to be unreasonable, but was unjustly discriminatory as compared with the 85c rate on flat sheets. Reparation denied. California Corrugated Culvert Co. v. A. G. S. R. R., 33 I. C. C. 445.

(o) This investigation involved the reasonableness of proposed changes in Southern Class'n I. C. C. 19, the schedules under suspension being contained in Supplement 4, as follows: Page 2, Index 11, address plates, in barrels or boxes, 1st class; Page 40, Indexes 7, 8 and 9, respecting certain entries as "tanks"; Page 24, Indexes 17, 18 and 19, respecting "Culverts." With respect to tanks and culverts a complete revision of the previous classification is contemplated. The Supplement provides for address plate holders, in barrels or boxes; address plates, in barrels or boxes; address plates and holders combined, in barrels or boxes; all at first class. The rating is in any quantity. The plates used in protestant's machines are about 1½ inches wide and 3½ inches long, the edges being grooved. Their value appears to be about 32 cents per pound, or about four times the value of sheet zinc. The proposed rating cannot be justified on the ground that the machines themselves of which the plates are part take first class. Parts of a machine are sometimes entitled to a lower rating than the machine itself. HELD, that respondents have failed to justify the proposed rating and that a rating higher than second class is unreasonable. Tanks—The schedule relating to tanks is limited to tanks, iron or steel, N. O. I. B. N., and the items in issue are as follows: U. S. Standard Gauge No. 16 or thicker; S. U., not nested, in packages or loose, L. C. L., rating increased from third to second class; S. U., in packages or loose, C. L., minimum increased from 20,000 to 24,000 pounds; K. D., rivets in bags, barrels or boxes, other parts in packages or loose, L. C. L., rating increased from sixth to fourth class; K. D., in packages or loose, C. L., minimum increased from 30,000 to 36,000 pounds. It is admitted that with respect to tanks, Class'n 40 is a product of patchwork. It is noted that the advance from third to second class on S. U. tanks applies only when not nested, and with respect to the increase from sixth to fourth on K. D. tanks, the sixth class rating is fitted primarily for carrying articles in carload quantities producing an average tonnage of 30,000 to 36,000 lbs. No claim is made that 36,000 lbs. of knocked down tanks cannot be loaded into a standard car. Set up tanks manufactured by the industries complaining are stated to average about 11,000 to 12,000 lbs.; but the Commission cannot find that a 24,000 lb. minimum is unreasonable because one tank occupies a car. HELD, that respondents have justified the reasonableness of the schedules with reference to tanks. Culverts -Protestants do not manufacture knocked down culverts and the protest grows out of the fact that culverts of competitive manufacture which may be shipped knocked down move under a lower rating than protestant's culverts, also from the fact that protestant's culverts of 18 or 20 gauge, of small diameter, come into competition with drainage tile, which is rated lower. The existing C. L. rating is sixth class, minimum 24,000 lbs. In Official Class'n culverts in carloads take 5th class, minimum 24,000 lbs., subject to Note 27. In Western Class'n, S. U., they take fourth class, minimum 20,000 lbs., subject to Rule 6-B. As to L. C. L. shipments, the ratings of one and one-half times first class are in each instance less than the corresponding ratings under the Official and Western Class'n, which are double first. The conclusions in Klauer Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 508, apply in this case. HELD, that respondents have justified the reasonableness of the schedules under suspension with reference to culverts. Classification of Address Plates, 33 I. C. C. 281.

(p) A classification should apply universally in territory which it purports to cover, and exceptions should be made by individual carriers only for exceptional reasons. Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C., 188, 190.

(q) The fact that a classification has long existed is persuasive of its reasonableness. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 267.

(r) While a uniform classification throughout the United States would doubtless tend to simplify the interrelations of tariffs and perhaps go far to level existing inequalities, it does not appear that the desired end would be attained by spreading western classification over official classification territory. Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582, 587.

(s) In Kansas-California Flour Rates, 29 I. C. C. 459, Arizona Corporation Commission v. A. & N. M. Ry., 29 I. C. C. 424,

and Arizona Wheat Rates, 29 I. C. C., 424, the Commission refused to approve certain rates on wheat and flour from Kansas, Nebraska, and neighboring states to Arizona points and California terminals. Following the Supreme Court's decision in the Intermountain Cases, (Railroad Commission of Nevada v. S. P. Co., 21 I. C. C., 329, and City of Spokane v. N. P. Ry., 21 I. C. C. 400), 234 U. S. 476, the carriers asked permission to increase the wheat and flour rates in connection with the general readjustment of rates contemplated. It appeared that the carriers did not intend to increase the difference between wheat and flour rates, but desired to increase the wheat rate from 58 to 67c and the flour rate from 65 to 75c, maintaining approximately the existing spread. Transportation conditions justified a higher rate on flour than on wheat. Better equipment was required and greater expedition; loss and damage claims were greater; the value per carload was greater; and the loading was but 52,888 lbs., as compared with 68,969 lbs. for wheat. Commodity rates to Denver, Salt Lake City and El Paso were 30, 50 and 50½, being 63.8, 51, and 58.7% of the fifth-class rate. The proposed flour rate of 75c to Califonria terminals would be but 47%. HELD, that respondents had justified as reasonable a rate of 75c on flour in carloads from Kansas, Nebraska, and neighboring states to California terminals, the spread between wheat and flour rates not to exceed 8c. Kansas-California Flour Rates, 32. I. C. C. 602.

(t) Chicken coops, hens' nests and waterers, not included within the term "stamped ware." Weber Kirch Mfg. Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-859.

(u) The Commission considered western trunk lines circular 1-K, I. C. C. No. A-513, containing special rules and regulations and exceptions to classifications, and in some cases proposing cancellations of rules in circular 1-J I. C. C. No. A-396. PARCELS POST MATTER IN MAIL SACKS: Rule 65 provided for first class carload ratings on such matter put up in regulation mail sacks having affixed thereto precanceled postage stamps. HELD that the rule was undesirable. HARVESTERS, MOWERS, ETC.: Cancellation of Rule 70 was proposed, increasing the rating on harvester machines, self binders, mowers and reapers, l. c. l., set up, from first class to double first class. HELD that the carriers had justified the change. EMPTY BOTTLES: It was proposed to cancel the rating of one-half fourth-class on second hand empty bottles from Minnesota and Dakota points to St. Paul and Minneapolis, Minn. HELD that the cancellation should be permitted. BUILDING OR PAVING BLOCKS: Where made of cement or concrete, cancellation of brick rates, minimum 40,000 lbs., was proposed. HELD that the rule might be cancelled. EMPTY CARBOYS: For mineral water; returned; cancellation of rule providing one-half of fourth class rates proposed. HELD that carriers might effect the cancellation. BUILDING MATERIAL MIXTURES: It was proposed to eliminate salt, pitch and tar mixtures with cement, lime, stucco, and plaster. The mixtures were not used commercially, and they did not represent general lines handled by jobbers. HELD that the mixtures might be eliminated. CIGARETTE PAPERS: It was proposed to cancel the rule providing smoking tobacco rates on cigarette paper for advertising purposes packed with smoking tobacco. HELD that no exception should be made from the rule, that the highest rated article in a package should determine the rating, with respect to an article so universally used as cigarette paper. ICE COVERS: Cancellation of the rule providing for free return of canvas covers or tarpaulins for ice was proposed. Paper had superseded canvas for this purpose. HELD that the rule might be eliminated. UNTHRASHED FLAX STRAW: It was proposed to increase the minimum from 20,000 lbs., the hay minimum, to 24,000 lbs. Flax straw loaded heavier than hay. HELD that the proposed change was proper. FOUNDRY FACINGS: It was proposed to cancel the provision for soft lump coal rates and minima thereon. Facings were largely made of coal mixed with relatively high grade commodities. HELD that the provision might be cancelled. CORN STARCH: Respondents sought to eliminate starch from the list of "uncooked grain or cereal food products manufactured from corn" which had been subject to the corn rate. HELD that starch might be eliminated from the list of corn products made subject to corn rates. IRON AND STEEL PIPE: Respondents sought to cancel the rule providing for class B. rates applied on shipments from producing points in the south to South Dakota destinations.

HELD that cancellation was not justified. PLASTERING HAIR OR FIBER: Respondents proposed to eliminate the rule providing for mixed shipments of this commodity in separate form, with lime or plaster. They were increasingly shipped ready mixed. HELD that the rule be eliminated. DAMAGED SHIPMENTS: Cancellation of the rule that damaged shipments received from another carrier, needing return for repairs should be returned free to shipper, was proposed. The Commission required, Rule 67, T-C, 18-A, that rules of such character be published. HELD that cancellation was not justified. STOVE PIPE, COAL HODS, AND DRIPPING PANS: Elimination of provision for fifth class rating on straight or mixed carloads of stove-pipe iron, stove pipe, stove-pipe elbows, and coal hods, and for mixed carloads of the foregoing with sheet-iron dripping pans and stove elbows, was sought. This rating also applied to the raw material from which the articles were made; which loaded much heavier. HELD that carriers had justified the elimination. THRASHING OUTFITS: Respondents proposed to eliminate the rule providing for class A rates, minimum 24,000 lbs., on threshing outfits, second hand. The rating of emigrant outfits in western classification was restricted to "property of an intending settler." HELD that the rule should be continued until the classification was revised by striking out such words. MAXIMA ON NEW OR REBUILT CARS: It was proposed that freight loaded on new or rebuilt cars should be subject to the published minimum weights, but not to exceed 40,000 lbs. HELD that the proposed rule be approved. SCRAP IRON: It was proposed to increase the minimum to 50,000 lbs. Scrap iron loaded as high as 70,000 or 80,000 lbs. and carriers moved it at their convenience. ADVERTISING MATTER: It was proposed to change the rule regarding mixtures of advertising matter, including signs, show cards, and pictures, not framed, with the goods advertised, so as to provide that the advertising matter should not exceed 2 per cent of the gross weight. HELD that the change might be made. CARLOAD RATINGS: It was proposed to provide that if carrier's agent at destination distribute a carload shipment to more than one consignee, less-than-carload ratings should apply on the entire shipment. HELD that this would punish the shipper for the dereliction of the carrier's agent, and could not be approved. CONCLUSION: Attention directed to views of Commission in Investigation and Suspension Docket, 76, 25 I. C. C. 479, respecting publicity of proposed changes and method of classification procedure. Western Trunk Line Rules, 34 I. C. C. 554.

§23. Uniform Classification.

(a) Argument frequently advanced against establishment of a uniform classification is that the great differences in transportation conditions will always require the establishment and maintenance of commodity rates. Rates on Fruits and Vegetables, 30 I. C. C. 56, 62.

COASTWISE TRAFFIC.

See Absorption of Charges, §5 (c); Export Rates and Facilities, II (c); Long and Short Hauls, §4 (w), (y).

(a) Rate on lumber from Fullerton, La., to Texas City, Tex., for coastwise shipment, found unreasonable to the extent that it exceeded the rate from Nitram, La., to Texas City by more than 1c per 100 lbs. Reparation awarded and reduction ordered. Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

(b) Steamship company and S. P. Co. may compete for interstate coastwise traffic within the meaning of the Act. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 696.

COMBINATION RATES.

See Evidence, §5½ (h); Passenger Fares and Facilities, §3 (l); Reasonableness of Rates, §7¼; Through Routes and Joint Rates §13 (rr), (ss), (uu), (vv), §16 (h), §22 (g), (p).

COMMERCE COURT.

I. JURISDICTION.
A. Review of Commission's Orders.
§½. In general.
§1. Car distribution.
§2. Denying affirmative relief.
§3. Granting affirmative relief.
§4. Fixing rates.

§4½. Injunction.
§5. Reparation orders.
§6. Questions of law and fact.
II. PROCEDURE.
§6¼. In general.
§6½. Accounting.
§8. Judicial notice.
§9. Pleading.

CROSS REFERENCES

See Courts.

I. JURISDICTION.

A. Review of Commission's Orders.

§½. In General.

(a) The limitation of the jurisdiction of the Commerce Court to that "Now possessed" by federal circuit court, did not preclude it from reviewing a fourth-section order of the Commission, since the effect of the fourth section as amended was not to create new powers theretofore existing, but simply to redistribute the powers already existing and which were then subject to review. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 992; 234 U. S. 476; 58 L. ed. —.

(b) An order of the Commission refusing relief from the rule of the long-and-short-haul clause is not purely negative, so as to preclude review by the Commerce Court. United States v. A. T. & S. F. Ry Co., 34 Sup. Ct. 986, 993; 234 U. S. 476; 58 L. ed. —.

§2. Denying Affirmative Relief.

(a) In 23 I. C. C. 277 the Commission entered an order refusing to compel certain trunk lines operating in the southwest to establish or re-establish through routes and joint rates with, and grant allowances and divisions to certain Louisiana "tap line" railroads connecting such trunk lines with timber lands and lumber mills. In 23 I. C. C. 549, the former order was amended by an order requiring such trunk lines to abstain from making any allowances out of the rate to the tap lines on shipments of proprietary freight, but required them to reestablish, within a certain time, through routes and joint rates on non-proprietary traffic. The latter order also provided that in case such trunk lines failed to reestablish the latter routes and rates, it would, on proper petition, enter an order requiring the same, or enter upon an inquiry with respect thereto. On appeal, the Commerce Court, in 209 Fed. 244, held that the Commission was without power to prohibit the making of joint rates by the trunk and tap lines, and the payment of some division of rates to the tap lines on lumber transported from proprietary mills, and annulled the order of the Commission in this respect. On appeal to the Supreme Court, it was objected that the order of the Commission was not reviewable by the Commerce Court, because merely of a negative nature. HELD, that the order was affirmative in its nature and the Commerce Court had jurisdiction. United States v. L. & P. Ry. Co., 34 Sup. Court, 741, 746; 234 U. S. 1; 58 L. ed.—.

(b) An order of the Commission refusing relief from the rule of the long-and-short-haul clause is not purely negative, so as to preclude review by the Commerce Court. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 993; 234 U. S. 476; 58 L. ed. —.

§4½. Injunction.

(a) Jurisdiction of the Commerce Court to enjoin orders of the Commission on application for relief from the rule of the long-and-short-haul clause, is not defeated by the fact that, violations of the fourth section being made criminal, the effect would be to permit the enjoining of criminal prosecutions; since the validity of orders rendered under the fourth section is not to be destroyed by a reference to one provision of that section. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 993; 234 U. S. 476; 58 L. ed. —.

II. PROCEDURE.

§6¼. In General.

(a) On a hearing before the Commerce Court where the only real issues are whether or not there was substantial evidence before the Commission to support its order, and whether or not it acted arbitrarily, not as denying a full hearing, but in acting in utter disregard of the evidence or upon distinctions not based upon the evidence, new evidence outside the record is not admissible. L. & P. Ry. Co. v. United States, 209 Fed. 244, 252.

§9. Pleading.

(a) Dismissal by the Commerce Court of a petition to have an order of the

Commission annulled, of which the court has jurisdiction, because of the joinder of a cause of action of which it has no jurisdiction, or because improper parties defendant are joined, held improper. L. & P. Ry. Co. v. United States, 209 Fed. 244, 251.

COMMODITIES CLAUSE.

I. CONSTITUTIONALITY.
II. APPLICATION AND CONSTRUCTION.

CROSS REFERENCES

See Allowances, §9 (h); Discrimination, §5½ (i); Financial Operation, §1 (g).

II. APPLICATION AND CONSTRUCTION.

(a) Defendant, railroad company, acting under a charter from the State of Pennsylvania which authorized it to engage in coal mining as well as in the business of a common carrier, transported 20 carloads of hay over its lines from Buffalo, N. Y., to Scranton, Pa., for the use of animals employed in and about its mines at Scranton, Pa. The coal taken from such mines was sold for use by the public, except such portion as was required for use as fuel by the company's locomotives. Defendant was convicted of violating the commodities clause of the Hepburn Act, and sued out a writ of error contending that the commodities clause violated the 5th Amendment to the Federal Constitution. HELD, that the statute relates to inbound as well as outbound shipments, both classes of transportation being within the purview of the evil to be corrected, and therefore subject to the power of Congress to regulate interstate commerce. While the exercise of that power is limited by the 5th Amendment, the commodities clause does not take property, nor arbitrarily deprive the company of a right of property. The statute deals with railroad companies as public carriers, and the fact that they may also be engaged in a private business does not compel Congress to legislate so as not to interfere with them as miners or merchants. Where carriers haul for the public and also for themselves, there is an opportunity for discrimination in favor of themselves as to rates, facilities, and quality of service, and the commodities clause is not an unreasonable and arbitrary prohibition against a carrier transporting its own property, but a constitutional exercise of a governmental power intended to cure or prevent the evils that might result. D. L. & W. Ry. Co. v. United States, 34 Sup. Ct. 65, 66, 231 U. S. 363, 58 L. ed. —.

(b) The commodities clause of the Hepburn Act is general in its scope, and applies not only to those particular instances in which the carrier may use its power to the prejudice of the shipper, but to all shipments which, however innocent in themselves, come within the scope and probability of the evil to be prevented. D. L. & W. Ry. Co. v. United States, 34 Sup Ct. 65, 67, 231 U. S. 363, 58 L. ed. —.

(c) Where hay is purchased by a railroad company for use in operating mines, in which 75 per cent of the coal produced is "assorted sizes" intended to be sold for domestic purposes and the remaining 25 per cent is steam coal used as fuel on the company's locomotives, the steam coal is in the nature of a by-product from a mine operated primarily for the purpose of obtaining coal for sale, and the hay cannot be said to be, within the purview of the exception to the commodities clause, necessary for the use of the company in the conduct of its business as a common carrier. D. L. & W. Ry. Co. v. United States, 34 Sup Ct. 65, 67, 231 U. S. 363, 58 L. ed. —.

(d) The contention that an arrangement made by certain carriers with a terminal company violates the commodities clause of the Interstate Commerce Act will not be considered by the Supreme Court on an appeal from the Commerce Court from an order by the latter enjoining the enforcement of an order of the Commission, where there is nothing in the record showing that such a contention was pressed upon the Commission, considered by that body, or that the order rendered was in any respect based upon the commodities clause. United States v. Baltimore & O. Ry. Co., 34 Sup. Ct. 75, 82, 231 U. S. 274, 58 L. ed. —.

(e) Prior to the passage of the Hepburn Act, the D. L. & W. Ry. Co. had for many years owned vast coal interests in Pennsylvaia, in the development of which it had expended large sums. To

comply with the provisions of the "commodities" clause, it organized a coal company to purchase the coal and declared a dividend of 50 per cent, offering its shareholders the right to use one-half the dividend to buy shares of the proposed coal company at par. The offer was accepted by nearly all the shareholders. Since that time, however, many changes had taken place among the stockholders of both companies, with the result that in October, 1913, the shares of the railroad not interested in the coal company had increased from 2,249 to 88,716, and the shares of the coal company not interested in the railroad had increased to 6,907 shares. HELD, that the transfer to the coal company was not a trick, sham or evasion, and that the Act does not prohibit the railroad from carrying the coal from its mines after it has passed into the hands of the coal company. United States v. D. L. & W. R. R. Co., 213 Fed. 240, 251.

(f) Where a railroad owning coal mines sells its coal to a corporation organized for the purpose of purchasing it, and subsequently transports the coal, the transportation is not in violation of the "commodities" clause, merely because a few persons own a controlling interest in both companies and some of the officers and directors are the same, the business of each being separately conducted and the railroad not discriminating in favor of the coal company as a shipper. United States v. D. L. & W. R. R. Co., 213 Fed. 240, 254.

(g) A contract between a railroad company owning coal mines and a coal company, by which the latter agrees to purchase all coal mined or purchased by the railroad company which the latter desires to sell, at a certain per cent of general average f. o. b. prices of such coal at tidewater, does not establish such interest of the railroad company in the coal purchased, after delivery to the coal-company, as renders its transportation in violation of the "commodities" clause, where all shipments are made by order of the coal company, which has full control of its selling prices. United States v. D. L. & W. R. R. Co., 213 Fed. 240, 255.

(h) Violation of the commodities clause would not justify an unjust discrimination against one of the companies violating such clause. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682.

(i) Ownership of a railroad by the principal shipper on its line is not prohibited by the Act. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 692.

(j) It is no defense to a charge of unjust discrimination that a short-line is violating the commodities clause. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 693.

(k) If the commodities clause of the Act is violated by industrial roads or tap lines operating as common carriers, that infraction of law is not to be corrected or punished by rate adjustment. Industrial Railways Case, 32 I. C. C. 129, 131.

(l) Commodities clause should be enforced and extended to all traffic. 31 I. C. C., Coal and Oil Investigation, 193, 224.

(m) Evils likely to arise from interest of railway companies in coal properties. Coal and Oil Investigation, 31 I. C. C. 193, 212, 213.

(n) If commodities clause is violated, that infraction of law is not to be corrected by rate adjustment. Industrial Railways Case. 32 I. C. C., 129, 131.

(o) Commodities clause of the Act excepts timber and manufactured products thereof. Industrial Railways Case, 32 I. C. C. 129, 132.

(p) Proceedings under the commodities clause of section 1 of the Act are under the jurisdiction of the Department of Justice. Second Industrial Railways Case, 34 I. C. C. 596, 604.

COMMODITY RATES.

I. CREATION AND PURPOSE.
§1. Nature in general.
§2. Relation to class rates.
II. APPLICATION AND CONSTRUCTION.
§2.½. In general.
§3. Specific commodity rating.
§4. Creation subsequent to shipment.
III. REASONABLENESS AND DISCRIMINATION.
§5. In general.

CROSS REFERENCES

See Advanced Rates, §2½ (f), §5 (2), (q), (t), (aa), §17 (c); Alterative Rates; Basing

Points and Lines, §1 (r); Classification, 17 (k); Distance Rates, §2 (a); Equalization of Rates, §3 (ff); Evidence, §1 (b), §13 (l) (d), (p), §14 (5), (hh); Express Companies, §10 (e); Long and Short Hauls, §5 (m); Tap Lines, §6 (b).

I. CREATION AND PURPOSE.

§1. Nature in General.

(a) Low commodity rates in effect from West to Augusta due to an effort to meet market competition of the East. Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 345.

(b) So many elements enter into the determination of a commodity rate that it can not be said that it must always bear a fixed relation to the corresponding class rate, even as between competing points. Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 551.

(c) In establishing commodity rates carriers frequently must take into consideration the peculiar requirements of particular communities and must meet those requirements by applying on certain commodities rates that are lower than would otherwise be deemed necessary. Des Moines Commodity Rates, 34 I. C. C. 281, 284.

§2. Relation to Class Rates.

See Advanced Rates, §5 (2) (f), (w); Blanket Rates, §6 (o); Blanket Rates, §10½ (1); Blanket Rates, §12 (a); Claims, §2 (u); Class Rates, §2 (u); Evidence, §13 (1½); Long and Short Hauls, §7 (b).

(a) Ordinarily whatever relation is established for class rates would apply in case of commodity rates. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 196.

(b) As a general rule commodity rates to Texas points are a smaller percentage below the corresponding class rates than those to Texarkana and Shreveport. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 581.

(c) Contention that commodity rate applicable to bridge iron and steel articles should have been applied instead of class rate on pipe n. o. s. on riveted steel pipe not sustained, the term "bridge" not being defined. Kittoe Boiler & Tank Co. v. E. R. R. Co., Unrep. Op. A-319.

(d) Commodity rate on beer from St. Louis and Milwaukee to El Paso not found unreasonable as compared with class rates to other points in Texas. Ramsey & Co. v. R. G. & E. R. R. Co., Unrep. Op. A-355.

(e) Commodity rate on l. c. l. shipment of automobiles from New York, N. Y., to San Francisco, Cal., should not have exceeded class rate contemporaneously in effect. Schaller v. N. Y. C. & H. R. R. Co., Unrep. Op. A376.

(f) Cancellation of commodity rate, leaving higher class rate in effect on all stock from Los Angeles, Cal., to Chicago, Ill., following action in so-called Inter-Mountain cases, and for the purpose of eliminating violations of section 4, not found to have been justified. Sulzerberger & Sons Co. v. S. P. Co., Unrep. Op. A400.

(g) So many elements enter into the determination of a commodity rate that it cannot be said that a commodity rate must always bear a fixed relation to the corresponding class rate, even as between competing points. Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 551.

(h) In the absence of evidence that a rate is unreasonable or discriminatory, the fact that a commodity rate bears a moderately greater or less proportion to a corresponding class rate is not a sufficient ground for condemning the commodity rate as unreasonable or discriminatory. Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 551.

(i) Commodity rates higher than a class rate is an abnormality which requires special justification; Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 27.

(j) Commodity rates bear no definite relation to class rates from defined territory. Oklahoma Traffic Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 129, 135.

(k) Commodity rates are special rates made to meet special conditions, and should not necessarily be disturbed because of a change in the class schedules. Mississippi River Case, 29 I. C. C. 530, 535.

(l) The naming of a commodity rate on an article has the effect of removing the article from the class rates. Allen

& Lewis v. C. B. & Q. R. R. Co. Unrep. Op. A453.

(m) Subsequent to hearing defendant established a commodity rate lower than the rate formerly in effect. Reparation awarded. Hyman v. L. & N. R. R. Co., Unrep. Op. A-589.

(n) Second-class rates on leather horse collar caps, found unreasonable to the extent that they exceeded the commodity rate. Van Voorhies & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-622.

(o) Contention that Commission erred in the Neilson Co. Case in comparing class rates to Baton Rouge, La., with commodity rate to Alexandria, La., not sustained. Brown-Roberts Hdw. & Supply Co. v. L. R. & N. Co., Unrep. Op. A-623.

(p) In western classification territory, commodity rates have been very generally established on agricultural implements on a much lower basis than the class rates. Merchants' Freight Bureau of Little Rock v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-633.

(q) Fifth-class rate on steel rails from Omaha, Neb., to McGee, S. D., found unreasonable to the extent that it exceeded subsequently established commodity rate. Reparation awarded. D. & W. Ry. Co. v. R. C. B. H. & W. R. R. Co., Unrep. Op A-646.

(r) Class rates found unreasonable as applied to carbon black to the extent that they exceeded the commodity rate previously and at present applicable thereto. Undercharges waived. California Ink Co. v. M. O. & G. Ry Co., Unrep. Op. A-664.

(s) Where a commodity rate is made for a manufactured product capable of classification, a certain equilibrium between competing points of manufacture should be preserved, if possible, and only some peculiar circumstance or condition can warrant the maintenance of a commodity rate from a few points of manufacture in a limited locality, while the class rate basis as to the same commodity is maintained from all other points of manufacture. Westbound Lake and Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

(t) While the Commission has recognized the fact that a commodity rate usually is lower than the rate applicable to the class from which the commodity is withdrawn, it has been held that it is not obligatory upon carriers to establish such lower rates. In the absence of proof that the commodity rate is unreasonable, a finding of unreasonableness cannot be predicated upon the mere fact that the commodity rate is higher than the corresponding class rate. Chamber of Commerce, Houston, Texas, v. I. & G. N. Ry. Co., 32 I. C. C. 247, 255.

(u) Complainant attacked the commodity rate of $1.05 on packing-house products in mixed carload with fresh meat rated third class from Wichita and Kansas City, Kan., South Omaha, Neb., and South St. Joseph, Mo., to Utah common points, as unreasonable to the extent it exceeded the fifth-class rate of 98c. Packing-house products in straight carloads were rated fifth class. The commodity rates on packing-house products in mixed carloads from the Missouri River to Chicago, Colorado common points and Texas common points were 23.5, 47c and 60c; the fifth-class rates, 27c, 47c and 75c. HELD, that the charges collected were unreasonable to the extent that they exceeded the fifth-class rate of 98c. Reparation awarded. Cudahy Packing Co. v. A. T. & S. F. Ry., 32 I. C. C. 560.

(v) Adjustments of such nature that the charges would be materially lower if class rates applied instead of commodity rates named, are anomalous and require much to justify them. New Orleans Shippers' Asso. v. I. C. R. R., 34 I. C. C., 32, 34.

(w) In the last analysis the presumption that a commodity rate higher than the class rate which would otherwise apply is unreasonable is predicated on the antecedent presumption that the class rate is fixed at the highest reasonable figure. New Orleans Shippers' Asso. v. I. C. R. R., 34 I. C. C., 32, 34.

(x) A commodity rate is usually lower than the corresponding class rate, but it is not obligatory upon the carrier to establish such lower rate. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C. 247, 255.

(y) A finding of unreasonableness can not be predicated upon the fact that the commodity rate exceeds the corresponding class rate. Chamber of Com-

merce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C. 247, 255.

(z) Commodity rate on dry glue from Milwaukee and Cudahy, Wis., to Winston-Salem, N. C., lower than class rates from Carrollville, Wis., an intermediate point, not found unreasonable. United States Glue Co. v. C. & N. W. Ry. Co., Unrep. Op. A-930.

II. APPLICATION AND CONSTRUCTION.

§2½. In General.

(a) Commodity rates are special rates which ought to be made with reference to all conditions surrounding transportation of the particular articles between the particular points. Mississippi River Case, 28 I. C. C. 47, 63.

(b) Contention that it is a custom where a generic term is used in a commodity tariff to apply the rate to all articles carried in classification under the same caption. Tariffs are to be applied as they read, and neither custom nor construction may properly be allowed to vary their terms. West Co. v. E. R. Co., Unrep. Op. A-316.

§3. Specific Commodity Rating.

(a) A commodities tariff takes the commodity out of the classification. Gimbel Bros. v. Barrett, 218 Fed. 880,886.

III. REASONABLENESS AND DISCRIMINATION.

§5. In General.

See Advanced Rates, 17 (o); Classification, §16 (e); Long and Short Hauls, §5 (ss).

(a) Commodity rates of upper crossings ought not to exceed those in effect to and from St. Louis in greater degree than difference with respect to class rates. Mississippi River Case, 28 I. C. C. 47, 63.

(b) Complainant attacked the commodity rates of 13c, 19c, and 29.1c, yielding ton-mile revenues of 12.74 mills, 17.75 mills and 17.96 mills, on shipments of fuel oil in tank cars from Sugar Creek, Mo., to Omaha, Crete and Grand Island, Neb., over distances of 204, 214 and 324 miles, as unreasonable and discriminatory compared with rates applicable to like traffic between points in Central Freight Assn. and southern territory, and from Buffalo, N. Y., to Coffeyville, Kan., and Lander, Wyo., to Omaha. It was necessary for the lines north of Kansas City to absorb the switching charges of the lines hauling the traffic from Sugar Creek to the latter point, a distance of 10 miles, and also to return empty from the destinations the tank cars used in transportation. Petroleum and its products were rated fifth class in Western Classification, the class rate from Sugar Creek being 16c to Omaha, and 19c to Crete; but it had become the practice of carriers in this territory to fix commodity rates lower than the class rates between points where there was any considerable movement of petroleum and these commodity rates had come to be the normal rates. The commodity rate of 29.1c from Sugar Creek to Grand Island was equal to the combination of the commodity rates to and from Lincoln, Neb. In Central Comm. Co. v. A. T. & S. F. Ry., 26 I. C. C. 373, a rate of 33.1c on shipment of fuel oil from Coffeyville, Kan., to Hastings, Neb., a distance of 480 miles, was held discriminatory to the extent that it exceeded 21c; and in Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co., 22 I. C. C. 283, rates of 19c and 22.5c on fuel oil from Sapulpa, Okla., to Acme, Tex., a distance of 292 miles, were held unreasonable to the extent that they exceeded 15c. HELD, the rates attacked were unreasonable and defendants should establish rates not exceeding 11c to Omaha, 12.5c to Crete, and 19c to Grand Island. Fairmont Creamery Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 661.

(c) Complainant attacked the commodity rates on fertilizer from Baltimore to points on the Cape Charles Ry. in Virginia as unreasonable. Rates graded up from Cape Charles to Kiptopeke. Taking Kiptopeke as a representative destination, the rates were $2.50 in carloads and $5.70 in less-than-carloads, the former sum made by combining the intermediate carload rates of $1.55, yielding 6 mills per-ton-mile, from Baltimore to Cape Charles, a distance of 260 miles, and 95c, yielding 7.9c per-ton-mile, from Cape Charles to Kiptopeke, a distance of 12 miles; and the latter sum made by combining the less-than-carload rates of $2.50, yielding 1c per-ton-mile, and $3.20, yielding 26.6c per-ton-mile. The movement was via the P. B. & W., N. Y. P. & N. and Cape Charles Railways, lines owned or controlled by the P. Ry. Co. The entire line of the Cape

Charles Ry. lay between Cape Charles and Kiptopeke. The carload rate of 95c from Cape Charles to Kiptopeke was prescribed by the Virginia Corporation Commission, while the less-than-carload rate of $3.20 was the Official Classification fourth-class rate. Complainant's principal competitors in furnishing fertilizer to Cape Charles Ry. points were located at Norfolk. Shipments from Norfolk were handled by the N. Y. P. & N. R. R. on what was equivalent to a switching charge to the water front, thence by barge to Cape Charles and via the Cape Charles Ry. beyond, the carload rate Cape Charles being $1.50 and to points beyond $2.00. All water routes were available from Norfolk to all points beyond Cape Charles, but notwithstanding this defendants transported about 90 per cent of the fertilizer consigned from Norfolk to Cape Charles points. Philadelphia also ships fertilizer to Cape Charles points, the carload rate being $1.50 to Cape Charles and the Baltimore rates beyond, for a distance of 228 miles. In 1913 there were shipped to Cape Charles points 2,481,660 lbs. of fertilizer from Baltimore, 2,330,963 lbs. from Norfolk, and 311,000 from Philadelphia. In 1912 the Cape Charles Ry. paid a dividend of 6 per cent. HELD, that defendant's rates to Kiptopeke were unreasonable to the extent that they exceed $2.10 per net ton c. l. minimum 40,000 lbs., and $3.50. Rates to other points on the Cape Charles Ry. to be adjusted accordingly. Merchants' & Manufacturers' Assn. v. C. C. Ry. Co., 30 I. C. C. 29.

(d) In 28 I. C. C. 82, the Commission suggested the advisability of reducing the commodity rates between Chicago, Mississippi River and Missouri River points on the one hand, and Colorado common points on the other, to eliminate the discrimination in favor of commodities moving from the eastern points to Salt Lake City. Carriers and shippers disagreeing, the matter came on again before the Commission for determination. In 19 I. C. C. 218, the rates of $1.20, 72c. $1.10 and 72c on agricultural implements, beans, canned goods and coffee were prescribed to Salt Lake City from the Mississippi River, and in 27 I. C. C. 673, rates of 64½c, 42c, 42c and 42c were fixed on like commodities to Salina, 463 miles from St. Louis. Denver is intermediate between these points, distant 912 miles from the Mississippi, and its representatives contended that, because of the easier transportation conditions between St. Louis and Denver than between Denver and Salt Lake City, the rates to Denver should be less than those to Salt Lake City, proportionately, as the distance was less. The aggregate freight charges on freight originating at the Atlantic seaboard and jobbed from Denver into territory west of Denver is relatively higher than the aggregate charge under the class rates from the Missouri River to Salt Lake City, making Denver jobbers pay higher aggregate charges than their competitors at the Missouri River towns. HELD, that no final solution can well be made without a general readjustment of rates throughout the territory involved. As providing a present remedy, a table of rates on commodities shipped in carloads from Chicago, Mississippi River and Missouri River points to Denver is prescribed, of which the following items are typical:

Commodity.	From Chicago, cts.	From Miss. Riv., cts.	From Mo. Riv., cts.
Agricultural implements, hand.	98	93	73
Beans and peas, dried, in sacks or barrels, minimum C. L. weight 40,000 lbs.....	61	58	46
Canned goods	67	63	50
Coffee, green, in sacks, minimum C. L. weight 30,000 lbs.	60	57	45

Colorado Mnfrs' Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 544.

(e) The Commission considered the proposed withdrawal of commodity rates on high explosives from St. Louis, Mo., and related points to Philadelphia, Pa., New York, N. Y., Boston, Mass., and points taking the same rates, as well as to destinations in Canada having higher combinations in effect in certain instances. There is no rating on high explosives in Official Classification, but one is provided in Agent Morris' exceptions thereto. Many of the respondent lines were not originally parties to such exceptions, and the application of class rates via such lines was, as a consequence, precluded. Accordingly, specific commodity rates, in every instance the exact equivalents of the class rates applicable under Morris' exceptions, were published to eastern and Canadian destinations. With the increase in the list of issuing carriers to such exceptions, it was thought that simplicity and economy might be subserved by eliminating the commodity rates and merely referring to the exceptions for a determination of rates and rules governing such trans-

portation. As to some of the carriers not parties to Morris' exceptions, high explosives would become subject to a combination of rates representing substantial increases. This is particularly true of Boston, none of the carriers reaching that point being parties to Morris' exceptions. HELD, that the commodity rates in question may be withdrawn. New England and Canadian High Explosives Rates, 29 I. C. C. 697.

(f) Complainant attacked the commodity rates of 18c on fresh meats and 16c on packing house products, yielding, respectively, 10.14 and 9.01 mills per ton-mile, on shipments from Mason City, Ia., to Chicago, Ill., a distance of 355 miles, as unreasonable per se, and discriminatory. Rates from Cedar Rapids, Waterloo, Ottumwa and Marshalltown, Ia., and from Austin and St. Paul, Minn., were on fresh meats, respectively, 13.5, 16, 14.5, 14, 18 and 20c, yielding revenues of 12.33, 11.76, 10.35, 9.68, 10.27 and 10 mills per ton-mile and on packing house products 13.5, 16, 14.5, 14, 16 and 20c, yielding revenues of 12.33, 11.76, 10.35, 9.68, 9.13 and 10 mills per ton-mile, for distances of 219, 272, 280, 289, 350.4 and 400 miles. The rates from Mason City were attacked as discriminatory (1) as unreasonably high as compared with the rates from competitive points, and also because the rate on fresh meat was 2c higher than that on packing house products, while rates from competitive points to Chicago were identical on the two commodities, except in the case of Austin. In Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98, rates identical with those in controversy were established from Austin to Chicago. Rates established by the Commission in Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, on traffic from southwestern packing houses to various markets east of the Mississippi River, vary from 26c and 31c for a 220-mile haul to 38 and 46 cents for a haul of 400 miles. The rate on fresh meats from Mason City (18c) is 42.8 per cent of the third class rate (42c), while the rates on fresh meat from Marshalltown and Cedar Rapids are only 35 per cent and 39.9 per cent, respectively. HELD (1), the allegation that the rates on fresh meat and packing-house products are unreasonable per se has not been sustained; (2) rates from Mason City to Chicago are not discriminatory, as compared with rates from competing points; (3) the fact that Mason City pays different rates on the two commodities while no difference is made from competing towns, is not in itself evidence of discrimination. Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547.

(g) Complainants attacked carload commodity rates from California terminals, Rocky Mountain and British Columbia points, to Nashville, Tenn., as unreasonable and discriminatory compared with rates to twenty-one specified destinations in Tennessee, Alabama, Kentucky, Indiana, Illinois and Ohio. The published through rates on canned salmon, canned goods, beans and peas, and wine, from California, Arizona and other southwestern points to Nashville were 89c, 99c, 99c and 93c, and to the other specified destinations 70c, 85c, 85c and 75c, the published combination rates, 86c, $1.01, $1.03 and $1.08. In Phillips-Trawick-James Co. v. S. P. Co., 13 I. C. C. 644, the Commission found rates to eleven of these destinations to be neither unreasonable nor discriminatory. Nashville is served by the L. & N. R. R., the N. C. & St. L. Ry., and the T. C. R. R. Of these, only the L. & N. R. R. served Birmingham and Tuscaloosa, Ala., two of the other specified destinations, and it had refused to meet the lower rates of other carriers to those points. None of the Nashville carriers entered Rives, Tenn., Columbus and Princeton, Ky., nor Cairo, Ill., and while one or more of them entered the other specified destinations, they were not responsible for the application of the lower rates thereto. The southeastern lines offered to accept as their division, south and east of the river crossings, out of the through rates to Nashville, proportionals of 13c on canned salmon, canned goods and beans and peas, and 17c on wine; thus making the through rates 83c, 98c 98c and 92c, respectively. HELD, that the existing rate situation did not justify the charge that Nashville suffered undue discrimination. But the published through carload rates to Nashville were unreasonable in themselves to the extent that they exceeded the published combination rates. Reparation awarded accordingly. Commodity rates should not in future exceed the lowest figures available at time of hearing, either as published through rates, published combination rates, or unavailable combination rates. Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265.

(h) Defendant's rule limiting the application of commodity rates to articles

shipped in boxes made entirely of wood or wood and metal found unreasonable and unjustly discriminatory. Pridham Co., v. S. P. Co., 30 I. C. C. 117, 122.

(i) Commodity rates on potatoes slightly higher than class "C" rates from Chicago and group to various points, not found unreasonable. Murphy Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-631.

(j) Complainants attacked the commodity rates on cotton linters to Salt Lake City and common points from producing points in Texas, Oklahoma, Arkansas and Louisiana, and from Memphis, Tenn., as unreasonable and discriminatory compared with rates from the same points of origin to Denver, Colo., and common points and to North Pacific Coast terminals. Any-quantity rates from all points of origin to Salt Lake City were $1.35, $1.45 and $1.60, respectively, on linters compressed when ordered, compressed in transit, and uncompressed to destination, and on shipments to Denver 56c to 98c, 66c to 70c, and 76c to 85c, respectively, the rate varying with point of origin. The rate on linters compressed in transit to North Pacific Coast terminals was 95c. On shipments to Utah and Nevada destinations, distances from Texas linter producing points were substantially the same through Salt Lake City as through Denver, while on mattresses Salt Lake City enjoyed an advantage, being further west. On linters compressed in transit and mattresses the rate was $2.32 via Denver and $2.01 via Salt Lake City. On linters to Portland, Ore., minimum 20,000 lbs., and mattresses, Portland to Boise City, Idaho, the rate, L. C. L., was $2.24, C. L., $2.05; as compared with linters to Salt Lake City, minimum 30,000 lbs., and mattresses, Salt Lake City to Boise City, any quantity, $1.98. Owing to low rates on mattresses from Chicago and from the Mississippi and Missouri rivers, Utah points also suffered more from eastern competition than Denver. Linter rates to Denver were reduced in 1911 and 1912, while those to Utah common points had remained stationary for many years. Ton-mile earnings on traffic from Texas points to Salt Lake City exceeded those to Denver by over 5 mills, while on shipments from Chicago the difference was about 1.9 mills. The rate of 60c on compressed linters from Texas points to St. Louis. 736 miles, yielded 1.63c per ton-mile as Lake City, 1,408 miles, which yielded compared with the rate of $1.35 to Salt 1.918c per ton-mile; but the tonnage to Utah was lighter and the haul more costly. HELD (1) that rates to Salt Lake City and Utah points taking the same rates from Oklahoma, Texas, Arkansas and Louisiana points and Memphis, Tenn., should not exceed rates to Denver and Colorado common points by more than 49c; (2) rates to Salt Lake City should not exceed 107 per cent of the rate from zone 2, as defined in amended fourth-section order 124, to North Pacific Coast terminals, nor 100 per cent of rates from zone 1 to California terminals; (3) requirements with respect to minimum weights should not be different for Utah points than for Colorado points; (4) reparation denied. Salt Lake Mattress & Mfg. Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 417.

In 28 I. C. C. 339, the Commission held that commodity rates from Baltimore, Md., and related points to Columbia, S. C., exceeding those from the same points to Augusta, Ga., all-rail or water-and-rail, discriminated against Columbia, since class rates to the two points were identical. On rehearing it appeared that while the class rates from Baltimore, Philadelphia and New York were the same to both destinations, the equality did not hold in rates from Boston, Mass., and Boston rate points. Thus from Boston the first-class rates all-rail to Columbia and Augusta were $1.13 and $1.08, respectively; water-and-rail $1.01 and 96c; a constant difference of 5c. The carriers had in the interim, in compliance with the Commission's holdings published new rates from the Ohio River crossings to Carolina territory. HELD, (1) that the adjustment of rates from New England points to Columbia and Augusta was not in issue, and that the rights of all parties would be maintained by restricting the Commission's order so that it should not cover New England points; (2) that in view of the pending readjustment of rates in the southeast no present order should issue respecting rates from Cincinnati, O.: Louisville, Ky., and Knoxville, Tenn., to Columbia and Augusta. Columbia Chamber of Commerce v. S. Ry. Co., 32 I. C. C. 504.

(k) Cancellation of commodity rate on brewers' rice from New Orleans to Dallas, Fort Worth, San Antonio, and Galveston, Tex., and applying rate applicable on clean rice, not justified.

Rates on Brewers' Rice from New Orleans, La., to Points in Texas, Unrep. Op. A-950.

(1) The Commission considered the proposed cancellation of the commodity rate of 6c per 100 lbs., on logs in carloads from Stuttgart, Ark., and vicinity, to Memphis, Tenn., distance 89 to 109 miles. The rate from Lonoke, Ark., to Memphis, 111 miles, was 6c; and that from 20 stations between Hart and Palestine, Ark., was 4½c. HELD that the cancellation proposed was not justified, the existing rate from Stuttgart according with other rates carried by respondent in the same locality. Rates on logs from Stuttgart, Ark., 34 I. C. C., 216.

COMMON CARRIER.

I. TEST OF STATUS.
§½. In general.
§1. Incorporation.
§2. Lease of line.
§3. Public offer to carry.
§4. Refusal to publish tariffs.
§5. Stock ownership.
§6. Transportation of private cars.
II. DETERMINATION OF STATUS.
§6½. In general.
§7. Question of fact.
III. OBLIGATIONS.
§8. In general.

CROSS REFERENCES

See Allowances, §9 (f); Branch Lines, §3; Facilities and Privileges, §1 (a); Pipe Lines, §4; Stock Yards Company; Tap Lines.

I. TEST OF STATUS.

§½. In General.

(a) It cannot be said that a transportation company is not a common carrier merely because a considerable portion of its business consists of freight carried for itself, or for the industry with which it is associated. If a company holds itself out to the public as a carrier of goods, for hire, invites the public to accept its services and use its facilities, it is a common carrier. Decatur Nav. Co. v. L. &. N. R. R. Co., 31 I. C. C. 281, 285.

(b) The status under the Act of a carrier by railroad is not determined by the length or the width of its railroad. Rates in Chicago Switching District, 34 I. C. C., 231, 238.

(c) In approaching the question whether the common carrier status of an industrial line is bona fide it must be borne in mind that there are interests of the industry beyond the mere question of rates in maintaining such a status. The recognition of such lines as common carriers in the association of railroads through which the interchange of cars is provided inures to the very great advantage of the controlling industry served by such a line in the way of remission of charges for the detention of cars. Second Industrial Railways Case, 34 I. C. C. 596, 600.

§1. Incorporation.

(a) Where a railroad originally created as a plant facility for an iron works is subsequently chartered as a railroad by the state in which located, and exercised the power of eminent domain and files tariffs with the Interstate Commerce Commission, it is a common carrier and thereby entitled to recover its public switching charge from a shipper along its line, irrespective of the fact that such shipper had a contract with the iron works to acept a less charge for the same. Crane R. Co., v. Central R. Co. of New Jersey, (Pa. 1915), 93 Atl. 1076.

§3. Public Offer to Carry.

(a) Manufacturers Railway, a terminal line in St. Louis, is a common carrier, as held in previous report. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 105.

(b) Butter, poultry and eggs do not fall within the class of articles which a common carrier may not be forced to receive for transportation. Lake-and-Rail Butter and Egg Rates, 29 I. C. C. 45, 51.

(c) A road is held to be a common carrier when it meets the test of its organization for that purpose under competent legislation of the state; when it is so treated by the public authorities of the state; when it is engaged in carrying for hire the goods of those who see fit to employ it; when it is authorized to exercise the right of eminent domain by the state of its incorporation. It is also a circumstance to be noticed in determining the true character of the road, that it is treated and dealt with

as a common carrier by connecting systems of other carriers. Industrial Railways Case, 32 I. C. C., 129, 131.

(d) Right of public to use road's facilities and to demand service of it is the real criterion determinative of its character. Decatur Navigation Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 285.

(e) It cannot be said that a transportation company is not a common carrier merely because a considerable portion of its business consists of freight carried for itself, or for the industry with which it is associated. Decatur Navigation Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 285.

(f) The right of the public to use facilities of a railroad determines its status as a common carrier, rather than the extent of its business. Crane Co. v. Central R. Co. of New Jersey, (Pa. 1915), 93, Atl. 1076, 1077.

§5. Stock Ownership.

(a) Generally speaking, the mere fact of ownership should make no difference in the status of a common carrier as such. Joint Rates with Birmingham Southern R. R., 32 I. C. C. 110, 120.

(b) Generally speaking, the mere fact of ownership should make no difference in status of a common carrier as such. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 120.

II. DETERMINATION OF STATUS.

§6½. In General.

(a) The fact that other common carriers are able to serve the great majority of the industries which the terminal road seeks to serve can have little or no weight in the consideration of the question as to whether or not the terminal road shall be permitted to receive divisions out of the through rates in the service which it seeks to perform. Such a test is not prescribed by law and is not permitted by it, regardless of what its merits may be from an abstract economic point of view. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C., 110, 120.

(b) The Duluth & Northern Minnesota R. R., which was a defendant in the case of Pulp & Paper Mfrs. Traffic Association. v. C. M. & S. P. Ry. Co., 27 I. C. C. 83, wherein the Commission reduced pulpwood rates from points of origin in Minnesota to Duluth as parts of through rates on interstate shipments, claimed on rehearing of a supplemental proceeding, growing out of that case, to be a state carrier and not subject to the jurisdiction of the Commission. In the former case, the order of the Commission ran against it and was obeyed by the publication and filing of the tariff prescribed. All pulpwood from off the line of the Duluth & Northern Minnesota is loaded in foreign cars, shippers placing their orders for such cars with the agent of the Duluth & Northern Minnesota at Knife River, Minn., the southern terminus of the road and its junction with the Duluth & Iron Range. These orders show the destination points, consignees, contents of cars and other data required for the preparation of billing and the subsequent execution of bills of lading. In lieu of the usual form of waybill the Duluth & Northern Minnesota issues in triplicate a freight bill showing Knife River as the destination and providing only for the charges up to that point. At Knife River bills of lading of Duluth & Iron Range form are made out by the Duluth & Northern Minnesota agent, signed by him as agent for the shipper and receipted by the agent of the Duluth & Iron Range. Charges up to Knife River are not billed to the Duluth & Iron Range, nor advanced by that carrier to the initial line, but are in every instance, it is alleged, collected from the shippers direct. There is, however, no change of ownership of shipments at Knife River; the cars are transferred from the custody of the Duluth & Northern Minnesota directly to the custody of the Duluth & Iron Range and the transportation, except for necessary switching operations, is continuous. Traffic from points without the state of Minnesota destined to Duluth & Northern Minnesota stations consists principally of supplies for lumber camps. Shipments of this character are received by the Duluth & Northern Minnesota from connecting lines on billing showing Knife River as destination. None of the charges up to that point are paid to connections by the Duluth & Northern Minnesota nor collected by that line from the consignees, but, as in the case of outbound traffic, there is uninterrupted carrier custody and transportation from the interstate shipping point to the final destination in Minnesota and no new bills of lading are issued at Knife River. There can be no doubt on this record that the defendant is, and in the past

has been, fully informed, when placing cars ordered for pulpwood shipments and when receiving such shipments for transportation, of the intended and required carriage to fixed and certain destinations without the state of Minnesota, and that it undertakes the performance of its portion of the continuous interstate journeys. HELD, since it is the nature of the traffic and not its accidents which determines whether it is intrastate or foreign, and the character of the service rendered not the manner in which goods are billed determining interstate character of the service, the D. & N. M. Ry. is subject to the Act and the jurisdiction of the Commission. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162.

(c) The fact that a carrier does not issue through bills of lading beyond its junction point, nor collect its charges from the carrier to which it makes delivery, nor advance to the carrier from which it receives interstate traffic the latter's charges, nor waybill shipments to interstate destinations beyond its own line, etc., does not indicate that such carrier is not engaged in interstate commerce, subject to the Act to Regulate Commerce and the jurisdiction of the Commission. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C., 162, 170.

(d) When the carrier is fully informed, when placing cars ordered for loading and when receiving shipments for transportation, of the intended and required carriage to fixed and certain interstate destinations, and it undertakes the performance of its portion of the continuous interstate transportation, such carrier is a common carrier subject to the provisions of the Act. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 171.

III. OBLIGATIONS.

§8. In General.

(a) A common carrier cannot claim reparation from another common carrier. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 108.

(bc) Industrial line, held to be a common carrier, is thereafter a public agency which should collect its charge from former owning industry the same as it does from other shippers. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 102.

(d) A lateral branch line railroad is entitled to a switch connection without regard to its status as a plant facility or common carrier. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505.

(e) A common carrier engaged in interstate commerce has no right to grant special favors to anybody. Johnson v. N. Y. N. H. & H. Ry. Co. (Me., 1913), 88 Atl. 988, 991.

(f) Common carriers are under obligation not to charge an excessive rate. On the other hand, the policy of inviting and authorizing the performance of this public function by privately owned companies involves obligations on the part of the public to the owners of these properties. Those who invest their funds in railroad shares are, of course, charged with the responsibility of securing for their properties honest and capable management. Investors in railroad securities, like investors in other securities, must bear the consequences of dishonesty or inefficiency on the part of those selected to manage the properties. The public should not be called on to pay higher transportation rates because once prosperous properties may be in need of additional funds as a consequence of mismanagement. Investors in railroad securities must also take the risk of those errors of judgment which not unfrequently attend even the careful management of enterprises. But they should likewise be permitted to enjoy fully the profits which naturally flow, under a reasonable scale of rates, from the exercise of good judgment, integrity and efficiency in the management of such properties. While the right to demand a higher rate may be denied when the existing charge is reasonable, even though the particular carrier may be in need of additional earnings, so a carrier may be entitled to a higher rate for a particular service because the existing rate is unreasonably low, although the carrier may not be in need of additional revenues. The Five Per Cent Case, 31 I. C. C. 351, 358.

(g) If industrial railway is a common carrier, it is entitled to all rights and subject to all limitations provided in the Act. Industrial Railways Case, 32 I. C. C. 129, 133.

(h) Common carriers may be compelled by mandatory writs to receive and carry lawful subjects of commerce. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 695.

(i) Common carriers by railroad may lawfully lease or hire as well as own suitable facilities for the performance of service which they are bound or undertake to perform for the public, or discharge some of their duties through agents, and neither the agents employed nor the owners of the facilities procured need be common carriers. A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92.

(j) Where a carrier has become a common carrier of oil between certain points, its right to arbitrarily refuse to accept and perform its common carrier duties with regard to the demands for transportation of oil between other points cannot be conceded. S. P. Co. Ownership of Oil Steamers, 34 I. C. C., 77, 79.

COMMON LAW

See Act to Regulate Commerce, §2 (JJ); Loss and Damage, §10.

COMMUTATION FARES

See Passenger Fares and Facilities, §5.

COMPARATIVE RATES.

See Advanced Rates, §8½, §18 (7); Blanket Rates, §6 (c), §11 (d), §13 (e), §18; Branch Lines, §2; Classification, IV, §7 (h), §17, §18; Differentials, §10 (b); Discrimination, §4 (q); Equalization of Rates, §3 (a); Evidence, §12, §13; Long and Short Hauls, §12 (2), (b); Penalty Rates; Reasonableness of Rates, §7½, §12½, §27½, §28, §27¾; Relative Rates; Routing and Misrouting, §5; Through Routes and Joint Rates, §5 (d), §11 (1), (a), §11 (2), (k).

COMPETITION

See Absorption of Charges, §4 (f), §5 (e); Advanced Rates, §5 (4), (a), (b), (f), §5 (7), §7 (4), §7 (5); Basing Points and Lines, §1 (e); Blanket Rates, §19; Branch Lines, §4; Bridge Tolls, I (e), II (b); Claims, §2 (u); Class Rates, §2 (u); Classification, §6, 17 (7h); Differentials, §8 (c), §8 (e); Discrimination, §3 (1), §8; Distance Rates, §1 (a); Equalization o. Rates, §4; Evidence, §14; Export Rates and Facilities, V (f), §2 (c); Express Companies, §21; Long and Short Hauls, II; Market Competition; Reasonableness of Rates, §8, §12½ (c); Routing and Misrouting, §1½ (a); Terminal Facilities, §1 (d), §3 (e); Through Routes and Joint Rates, §13 (kk); Water Competition.

COMPLAINT

See Absorption of Charges, §3 (a), §19½ (a), (b); Discrimination, §18; Long and Short Hauls, §11; Procedure Before Commission, II; Proportional Rates, IV (c); Through Routes and Joint Rates, §16 (g).

COMPRESS COMPANIES AND CHARGES.

I. CONTROL AND REGULATION.
II. REASONABLENESS OF CHARGES.
III. RULES AND REGULATIONS.

II. REASONABLENESS OF CHARGES.

(a) It is manifestly economical from a transportation standpoint to have compression as near the origin of shipment as possible; but in determining the propriety of the practice, the railroad may not deal with it irrespective of its effect upon the transportation of cotton. Rates on Cotton and Cotton Linters, 30 I. C. C. 467, 469.

(b) Defendant's failure to compress certain shipments of cotton linters from Grenada, Miss., to New Orleans, La., is not undue discrimination. Reparation denied. Geismar & Heymann v. I. C. R. R. Co., Unrep. Op. A-609.

(c) Classification rule, respecting rates on cotton, does not impose obligation upon carrier to compress. Geismar

& Heymann v. I. C. R. R. Co., Unrep. Op. A-609.

(d) Complainant attacked allowances for compression of cotton at South Atlantic ports as illegal. Cotton may be compressed and paid for by the carrier at Athens, Atlanta, Macon, Covington and Augusta and other points on the Georgia R. R. at which are located compresses under contract; or the cotton may be moved uncompressed to the ports of Norfolk, Wilmington, Charleston, and Savannah, there compressed and payment for the service made by the A. C. L. Ry. If the shipper elects to have his cotton compressed at the compressing points on the Georgia R. R., the service is paid for by the carrier out of the through rate at a rate of 8½c per 100 lbs. If the shipper elects to have the compressing done at Norfolk, Wilmington or Charleston, the A. C. L. pays 5c per 100 lbs., except on cotton from Augusta to eastern terminals on the Georgia R. R., on which a rate of 7½c is paid at the same ports. At Savannah a rate of 8½c is paid for compression on cotton from Augusta and other points on the Georgia R. R. It appeared that the compressing done at the ports is done after the transportation by the carrier has been completed, the cotton being then hauled to the compressing plant and compressed and then delivered aboard ship or stored in warehouses. HELD, the service is in no sense connected with the transportation, and it is plain that there is no authority in the Commission to fix a charge for such service. It is also plain that there is no warrant in law for the practice. The allowance for compression is, therefore, unlawful, and must cease. Inman, Akers & Inman et al. v. A. C. L. R. R. Co., 32 I. C. C. 146.

(e) Under the carrier's tariffs merchants located at interior points and shipping cotton for export are assessed a terminal charge at the port, but this charge is not made on traffic handled for merchants located at the port and delivered to them at the team track. HELD, that this is not discrimination, since in the latter case the carrier performs no terminal service, while in the former such service is performed in the delivery of the freight at shipside, etc. Inman, Akers & Inman, v. A. C. L. R. R. Co., 32 I. C. C. 146, 147.

(f) Where cotton is compressed at the port, after the transportation is ended, the service is in no sense connected with the transportation or an instrumentality used therein, as provided for in section 15 of the Act; and any allowance made therefor by the carrier is therefore unlawful. Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 148.

(g) An allowance for the compression of cotton at the port, authorized in the published tariffs and applied to all shipments alike, even though the compressing is done after the transportation is ended, is not a rebate. Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 147.

(h) No warrant in law for an allowance for compression service rendered by carrier at port. Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 148.

(i) Compression of export cotton at port of transshipment held not to be a service rendered by owner of property transported which is "connected with such transportation" by rail carrier. Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 148.

(j) Compression service rendered at port is no sense "connected with the transportation," and Commission is without authority to establish any charge therefor. Inman, Akers, & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 148.

(k) Where the through rate to desired port includes compression by carrier, such compression should be performed by carrier receiving the cotton at compress point. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 276.

(l) Rate from point of origin to compress point should be no more than the reasonable local rate. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 276.

(m) The Commission considered the proposal to withdraw the compression-in-transit arrangement on cotton shipped from Southern California and Arizona to St. Louis, Mo., New Orleans, La., and Galveston, Tex., and intermediate territory east of El Paso, Tex., and to increase the rate on uncompressed cotton from 95c to $1.15 per 100 lbs., and fix the rate on compressed cotton at 85c. On the direct line of movement no compresses existed west of San Antonio or

Houston, Tex.; and the effect of the proposed tariff changes wou.d be to require shippers to forward their cotton, uncompressed, having it compressed at or near destination at a charge of probly 10c per 100 lbs. The existing westbound rate, compelled by water competition, via Galveston and the Panama Canal, was the same as the eastbound rate, though compression here took place near the points of origin. No change, either as to rate or in transit arrangement was contemplated on westbound traffic. The following comparisons were noted:

From	To	Distance	Rate	Average Loading	Per Car Earnings	Per Car Mile Earnings
		Miles	Cents	Pounds		Cents
Calexico, Cal.	Galveston, Tex.	1,555	*85	24,400	$207.40	13.3
Montrose, Ark.	St. Louis, Mo.	474	45	38,000	171.00	36.0
Georgetown, La.	St. Louis, Mo.	605	55	38,000	209.00	34.5
Shreveport, La.	Kansas City, Mo.	633	43	38,000	163.40	25.8
Calexico, Cal.	Galveston, Tex.	1,555	**85	40,000	340.00	21.9
			**115	24,400	280.60	18.0

*Present rate less compression allowance **Proposed rates.

HELD, that respondents had not justified the proposed changes in rates and transit practices. Cancellation of suspended tariffs directed. But conditions surrounding the eastward movement of cotton not being so favorable as to volume, loading, etc., as those obtaining westbound, justified an east bound rate of not to exceed $1.05. Eastbound Transcontinental Cotton Rates, 34 I. C. C., 248.

COMPROMISE

See Reparation, §7½ (b).

CONCENTRATING RATES AND PRIVILEGES.

CROSS REFERENCES

See Discrimination, §5 (d), §5½ (b); Facilities and Privileges, §15 (sc); Penalty Rates; Reparation, §16 (gh); Routing and Misrouting, §7 (m).

(a) Protestants complained of respondent's tariff rule providing that the benefit of low inbound rates on cotton and cotton linters, shipped from Arkansas points to concentrating points within the state, should be extended only to parties shipping cotton or cotton linters outbound, and then only where delivered to respondent without routing other than the designation of the terminal line. Such rates, ranging from 90 per cent to as low as 20 per cent of the local intrastate rate, were any-quantity rates, and the object of the rule was to enable defendant to avoid being short hauled, to conserve its car supply, and, by consolidating small lots in carloads at the concentration points, receive the benefit of maximum hauls and loads outbound. HELD, that section 15 of the Act is not a flexible rule of law to be expanded or contracted to meet the needs of carriers under varying situations, and since the routes and rates from points of origin through concentration points to final destination are through routes and rates, the rule is in plain contravention of that section. But a tariff provision giving a shipper the option of directing routing on payment of higher local inbound rates, or of availing of special low inbound rates, on condition that the intermediate routing is left to the carrier, would be proper. Cancellation of rule directed. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106.

(b) The Commission considered the proposed withdrawal of concentration privileges at Little Rock, Conway, and Morrillton, Ark., on cotton from points on the A. C. R. R., restricting shippers to Fort Smith and Van Burean, Ark. The privilege was withdrawn because at certain seasons the movement is so heavy that it is impossible to furnish adequate equipment to move it, entailing danger from fire to cotton stored on platforms and damage from exposure to the elements, but the effect of withdrawal would be to confine shippers to the lower prices of a single market, Fort Smith and Van Buren being but 5 miles apart. There is but one compress at each point, and their storage facilities and capacity are insufficient to meet the demand, while

prices have ranged from one-eighth to one-half cent per 100 pounds lower than at the other three markets. At Little Rock there are 4 compresses and ample storage and banking facilities. Little Rock, Morrillton and Conway were more remote from points of origin than Fort Smith or Van Buren, and respondents asked that, in the event withdrawal of concentration privilege at the former points was denied, they be allowed 8c per 100 pounds in addition to the through rate from the flat haul over that necessary to reach the first compress point. HELD, that no justification has been shown for withdrawal of concentration privilege at Little Rock, Conway and Morrillton and that the schedules in question should be cancelled. The evidence does not warrant a finding that respondents should receive extra compensation for the flat haul beyond the first compress point. Rates on Cotton and Cotton Linters, 30 I. C. C. 467.

(c) It is manifestly economical from a transportation standpoint to have compression as near the origin of shipments as possible; but to determine the propriety of the practice the railroad may not deal with it irrespective of its effect upon the transportation of cotton. Rates on Cottton and Cotton Linters, 30 I. C. C. 467, 469.

(d) Defendant's practice of charging the local rate on rough material to the concentration point and when the finished product moves out to refund on the basis of a concentration rate not unreasonable. Cornie Stave Co. v. C. R. & P. Ry. Co., Unrep. Op. A456.

(e) Withdrawal of concentration privilege at Little Rock, Conway and Morrillton, Ark., on cotton from points on the Arkansas Central R. R. and the restriction in that respect of shippers to Fort Smith and Van Buren, Ark., found not to have been justified. Rates on Cotton and Cotton Linters, 30 I. C. C. 467, 470.

(f) Concentration is a commercial necessity. American Round Bale Press Co, v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 461.

(g) The Commission considered defendant's proposal to abolish a tariff provision for concentration and compression of cotton and cotton linters at Alexandria, La., and reshipment on the basis of the through rate, while continuing to accord the privilege to Ruston, La. The compress at Alexandria being off respondent's tracks, it was compelled to pay switching or drayage charges on cotton delivered; but the conditions existing at Ruston were not shown. HELD that, while respondent was entitled to reasonable compensation for services performed, all points should be treated alike, except as conditions surrounding the service at different points might warrant different treatment. Burden of justifying proposed increased rates not sustained. Concentration of Cotton at Alexandria, La., 34 I. C. C., 163.

CONCURRENCES

See Tariffs, §10; Through Routes and Joint Rates, §16 (a), §20½.

CONFLICT IN RATES

See Bills of Lading, §9, §9 (3); Routing and Misrouting, §3, §3½; Tariffs, §11.

CONNECTING CARRIER

See Absorption of Charges, §1 (a); §4 (a); Loss and Damage, §1 (a), §6 (y), §14, §15 (a), §15 (b), (e); Passenger Fares and Facilities, §14 (c); Reconsignment, §5 (a); Routing and Misrouting, §5½ (h); Switch Tracks and Switching, §2 (d), §4 (z), (aa), (hh), §7; Terminal Facilities, §5 (l); Through Routes and Joint Rates, §4 (j).

CONSPIRACY

See Evidence, §10; Financial Operation, §1 (g).

CONSTITUTIONAL LAW

See Act to Regulate Commerce, I; Attorneys' Fees, (f); (b); Long and Short Hauls, §1; Loss and Damage, §1; Pipe Lines, §2.

CONSTRUCTION OF RATES

See Bills of Lading, III; Crimes, §2; Demurrage, §12; Reconsignment, §5; Refrigeration, §6; Released Rates, II.

CONTRACTS

See Special Contracts; Tariffs, IV.

CONTROL AND REGULATION

See Absorption of Charges, III; Adjacent Foreign Country, I; Advanced Rates, I; Allowances, I; Bills of Lading, I; Blanket Rates, I;; Branch Lines, III; Cars and Car Supply, I; Demurrage, I; Discrimination, I; Divisions, I; Electric Lines, I; Evidence, §17 (h); Equalization of Rates, I; Export Rates and Facilities, I; Foreign Commerce, I; Interstate Commerce, II; Long and Short Hauls, I; Passenger Fares and Facilities, I; Pipe Lines, I; Proportional Rates, V; Reasonableness of Rates, I; Reduced Rates, I; Refrigeration, I; Released Rates, I; Routing and Misrouting, I; Storage, I; Switch Tracks and. Switching, I; Tap Lines, I; Tariffs, I; Telephone and Telegraph Companies, III; Terminal Facilities, I; Through Routes and Joint Rates, I; Undercharges, I; Water Carriers, I; Weights and Weighing, I.

COOPERAGE

See Allowances, §8 (2).

CORRESPONDENCE

See Accounting, §1 (l); Interstate Commerce Commission, §4 (a), (b), (c), (d), §6¾.

COURTS.

I. ACTIONS.
§1. In general.
§2. Defenses.
§3. Mandamus.
§4. New trial.
§5. Suits against Commission.
II. APPEAL.
§6. In general.
III. UNITED STATES COURTS.
§6½. Jurisdiction in general.
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IV. UNITED STATES SUPREME COURT.
§10. In general.
V. STATE COURTS.
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VI. PRACTICE AND EVIDENCE.
§12. In general.
§13. Pleading.
§14. Injunctions.

CROSS REFERENCES

See Commerce Court; Interstate Commerce Commission, II, §2, §3; VII; Loss and Damage, §4 (a), §6 (d); Overcharges, (p).

I. ACTIONS.

See Actions of Law.

§1. In General.

(a) Where a carrier has, solely with a view to giving a particular shipper an unlawful preference, violated its own rules as to distribution by which private cars were not charged against the distributive share of a mine, and in allotting coal cars to another shipper discriminated against him by counting cars owned by him, it is in no position to plead in justification a subsequently promulgated order of the Commission, holding such rules of distribution to be in violation of the Interstate Commerce Act, and directing the distribution thereunder be discontinued. Stineman Coal Mining Co. v. Pennsylvania Ry. Co. (Pa. 1913), 88 Atl. 761.

(b) The purpose of the Carmack amendment was to prohibit the initial carrier from stipulating in its contracts that it is only bound to carry the property over its own lines and deliver to a connecting line, since this practice entailed hardship upon the shipper, who was frequently unable to obtain evidence showing how or where a loss occurred. Hogan Milling Co. v. Union Pac. Ry. Co. (Kan. 1914), 139 Pac. 397, 398.

(c) The Carmack amendment does not provide that suit against the initial carrier shall be the exclusive remedy for the offended shipper. It provides merely for suit against the initial carrier, but does not take away the right of the shipper to proceed in a proper case against a connecting carrier. A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ga. 1913), 78 S. E. 1019, 1021.

(d) There is nothing in the Hepburn Act, as amended by the Carmack Act,

which will prohibit a shipper of goods in interstate commerce over the lines of several carriers from bringing suit, under the provisions of the Georgia Civil Code of 1910, section 2752, against the last carrier who received the goods as "in good order" for damages sustained on account of loss or damage to the goods. A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ga. 1913), 78 S. E. 1019, 1021.

(e) Damages accruing from the failure of a carrier to have the lawful rate posted and kept open to public inspection, as required by the Act, does not give rise to an independent cause of action on the part of a consignee, such as may be pleaded by way of set-off in an action by the carrier for the difference between charges collected on a shipment and those actually due the carrier under the lawful rate. G. of G. Ry. Co. v. Birmingham Sand & Brick Co. (Ala., 1913), 64 So. 202, 205.

(f) The Carmack Amendment may be invoked by a shipper in a suit against a connecting carrier, although the declaration does not aver that any connecting carrier existed or show any facts to allow the Carmack Amendment to operate. Norfolk Trucker's Exch., Inc., v. Norfolk Southern R. Co. (Va., 1914), 82 S. E. 22, 92, 93.

(g) In so far as later amendments have been made provisions for fixing or changing schedules or standards for freight rates in interstate carriage, the determination in regard to discriminatory practices, and the like, by the Interstate Commerce Commission, and for the investigation of certain matters by that body before suit may be brought in any court, the original act and the amendments must be read in connection with each other so as to harmonize the entire act. Western & A. R. Co. v. White Provision Co. (Ga., 1914), 82 S. E. 644, 645.

(h) Commission desires that courts settle definitely any doubtful constructions of law. Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C., 100, 106.

(i) There is nothing in the Interstate Commerce Act to indicate that the courts have been deprived of the power to act with respect to complaints that may arise out of the failure of carriers to carry out their contracts of transportation promptly and safely and properly to perform their duties as common carriers. While it is true, since the passage of that act in its amended form, Congress has taken over the subject of interstate shipment of merchandise and baggage, and its enactment supersedes state legislation so far as it goes, and while it is also true that there is a conflict of decisions, all questions arising under the provisions of said Act are to be controlled by the reasoning laid down by the decisions of the United States courts. Detmer-Walen Co. v. D. L. & W. R. Co., 153 N. Y. S., 288, 289.

§3. Mandamus.

(a) Mandamus will not lie under section 20 to disclose privileged communications between an individual and his counsel. United States v. L. & N. R. R. Co., 212 Fed. 486, 493.

(b) A petition for mandamus which demands the production of papers executed before the passage of the Hepburn Act, so indefinitely worded that the court cannot determine what portions may be privileged communications between attorney and client, and what not, may be denied in the court's discretion. United States v. L. & N. R. R. Co., 212 Fed. 486, 494.

§5. Suits Against Commission.

See Procedure Before Commission, §12.

(a) In 17 I. C. C. 552, the Commission reduced gathering rates on citrus fruits, pineapples and vegetables, from Florida points of production on the F. E. Ry. to the basing point at Jacksonville, Fla. Such reduction was made because of increased tonnage shown to exist on similar traffic handled by the S. A. L. Ry. and the A. C. L. R. R., though no evidence was adduced tending to show that similar conditions existed with respect to the F. E. C. Ry. HELD, that the order of the Commission directing such reductions should have been enjoined. F. E. C. Ry. Co. v. United States, 34 Sup. Ct. 867, 873; 234 U. S.—., 58 L. ed.—; reversing 200 Fed. 797, refusing to enjoin the Commission's order in 17 I. C. C. 552.

(b) The court in substituting its judgment as to the existence of preference for that of the Commission, on the ground that where there was no dispute as to the facts it had a right to do so, obviously exerted an authority

not conferred upon it by the statute. It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which, from its peculiar character, would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case, preference or discrimination existed. The amendments by which it came to pass that the findings of the Commission were made not merely prima facie but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It cannot be otherwise, since if the view of the statute upheld below be sustained, the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action. U. S. v. L. & N. R. R. Co., 35 Sup. Ct. Rep. 113, 114; 235 U. S. 314; 236 U. S., 318, 59 L. ed.

II. APPEAL.

§6. In General.

(a) In a case involving a through shipment, based on a contract between carriers as to rates, the initial carrier cannot raise a moot question as to the constitutionality of the Carmack Amendment as to shipments under the local rates of connecting carriers. C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 104 N. E. 581, 585.

(b) A terminal carrier cannot on appeal take advantage of the provisions of the Carmack Amendment, where there is no pleading covering the point and the matter was not included in a motion to direct a verdict nor any instruction asked on the subject. Glassman v. C R. I. & P. Ry. Co. (Iowa, 1914), 147, N. W. 757, 759.

(c) Where reports and orders of the Interstate Commerce Commission were admitted in evidence upon the trial of an appeal in the district court under an agreement that part of such reports were incompetent and could be eliminated in the charge to the jury, and parts of such reports were read to the jury without any objection by opposing counsel, objection to the same cannot be raised for the first time upon appeal. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 334; 236 U. S. 412, 434; 59 L. ed.

III. UNITED STATES COURTS.

§6½. Jurisdiction in General.

(a) Where a party elects under section 9 to sue in a Federal Court for alleged unreasonable charges, the court in which action is brought has jurisdiction to determine the sufficiency of the complaint. National Pole Co. v. Chicago & N. W. Ry. Co., 211 Fed. 65, 68.

(b) An action brought in a state court against a carrier under the Carmack Amendment, involving less than $3,000, can be removed to the Federal District Court only where it affirmatively appears from the complaint that a Federal question is involved, or the validity, interpretation or construction of the laws of the United States arise, and not where the question presented is one of fact only. Orr v. Baltimore & O. Ry. Co., 145 N. Y. Supp. 378, 381.

IV. UNITED STATES SUPREME COURT.

§10. In General.

See Loss and Damage, §2 (f).

(a) The contention that an arrangement made by certain carriers with a terminal company violates the commodity clause of the Interstate Commerce Act will not be considered by the Supreme Court on an appeal from the Commerce Court from an order by the latter enjoining the enforcement of an order of the Commission, where there is nothing in the record showing that such a contention was pressed upon the Commission, considered by that body, or that the order rendered was in any respect based upon the commodity clause. United States v. Baltimore & O. Ry. Co., 34 Sup. Ct. 75, 82, 231 U. S. 274, 58 L. ed. —.

(b) In matters involving the interpretation of the Interstate Commerce Act, the determination of the Supreme Court of the United States is the law of the land and binding on the Supreme Courts of the various states. In a case involving nothing but intrastate traffic, on the other hand, the duty of construing state statutes with reference thereto devolves solely on the state courts of appeal, which are in no wise bound to follow the reasoning of the Federal Supreme Court in decisions

under similar statutes, though a proper regard for the wisdom of that tribunal should impel a careful consideration of such reasoning. C. C. C. & St. L. Ry. Co. v. Blind (Ind., 1914), 105 N. E. 483, 494.

(c) The wife of an employee of the C. & W. C. Ry. sustained personal injuries while traveling on that line on a pass that purported to exempt the company from liability, the pass having been issued gratuitously under the Hepburn Act. On suit the state court, in 79 S. E. 242, held that under the act the pass was not a free pass, but was issued in consideration of the services of the employee. HELD, that a question was presented under the act, reviewable by the U. S. Supreme Court on writ of error. C. & W. C. Ry. Co. v. Thompson, 34 Sup. Ct. 964; 234 U. S. 576; 58 L. ed. —

V. STATE COURT.

See Loss and Damage, §8 (e); Court, V; §9 (g); §13¾ (j); Overcharges, (f), (i), (q).

§11. In General.

(a) A state court has no jurisdiction of an action to recover overcharges, where it is alleged that the carrier published a rate of 1 cent per 100 lbs., with a minimum charge of $5.00 per car, under which it should have furnished cars of a carrying capacity of 50,000 lbs., but instead was furnished cars of a capacity of 40,000 lbs., which was insufficient to enable them to earn $5.00 at the given rate, since such allegations show a contention relating to the lawful construction of an interstate tariff. St. Louis Southern Ry. Co. v. J. S. Patterson Const. Co. (Ind., 1914), 104 N. E. 512, 516.

(b) State as well as federal courts have jurisdiction of actions brought under the Carmack amendment against an initial carrier for goods lost by a connecting carrier. St. L. B. & M. Ry. Co. v. Gould (Tex. Civ. App., 1914), 165 S. W., 13.

(c) A consignment of nickel matte was shipped from a French port to the port of New York. Plaintiff's customhouse brokers made the necessary entry of the goods and executed a delivery order directing the steamship to deliver the matte to the American Exp. Co. Their messenger boy by mistake delivered the order to the Adams Exp. Co., by whose employees the word "American" was stricken out and "Adams" substituted. The Adams Exp. Co. thus obtained possession of the goods, transported them to New Brunswick, N. J., where the charges were paid by plaintiff under protest. HELD, that plaintiff might properly resort to a state court to recover the express charges paid, not being required to seek relief before the Commission or a federal court, since, defendant having, without authority, assumed the responsibility of making the shipment, the relation of the shipper and carrier did not exist. U. S. Nickel Co. v. Barrett (1914), 148 N. Y. S. 325, 328.

(d) A state court has jurisdiction of an action by a shipper to recover excessive charges on an interstate shipment, paid under protest. Mott Store Co. v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 322.

(e) A state court has power to construe a tariff on file with the Interstate Commerce Commission and to say whether or not a particular rate exacted is in accordance with the tariff. So. Pac. Co. v. Frye & Bruhn (Md., 1914), 143 Pac., 163, 165.

(f) Since the Hepburn Act, the federal statutes, supplemented by the common law as declared by the federal courts, have superseded all state laws pertaining to the substantive rights of parties to an interstate shipment of property; but, in respect to remedies and procedure, the state laws are applicable in state courts. St. L. & S. F. R. Co. v. Mounts (Okla., 1914), 144 Pac. 1036.

(g) A petition alleged in substance as follows: The plaintiff purchased a carload of hogs and caused them to be shipped from Kelso, Tenn., to Atlanta, Ga. The hogs could have been shipped in a car 36 feet long, for which the tariff rate as published by the carriers between those points was $53. The vendor ordered a car of that length for the purpose of the shipment. Under the tariff schedule the carriers reserved the right, for their own convenience, to furnish a longer car than that called for or required by shippers. In that event the rate of the freight is the price of the car called for, when such car is sufficient to carry the shipment. The first carrier, the Nashville, Chattanooga & St. Louis Ry., for its own convenience, instead of furnishing

a car 36 feet long (which would have been sufficient) furnished one 38 feet long, and this fact was duly noted on the bill of lading. The freight was prepaid and this fact was also entered. When the car of hogs arrived at its destination the last carrier, the defendant, refused to deliver the hogs without the payment of an additional amount of $2.65, though notified of the facts by the plaintiff and against its protest; and thereby damage resulted, as set out. HELD, since the plaintiff did not contend that the fixed tariff rate was unreasonable, illegal or discriminatory, but that its vendor paid the fixed rate, and had due notation thereof made by the terminal carrier, in spite of this, it refused to perform its duty as a common carrier by delivering the shipment without requiring payment of an additonal and wholly illegal demand, and section 22 of the Interstate Commerce Act provides that nothing in the act shall in any way abridge or alter the remedies existing at common law or by statute, the state court had jurisdiction of the plaintiff's claim for damages arising from the illegal refusal of the terminal carrier to deliver freight on which the proper charges had been paid, and suit could be brought against the final carrier without joining the initial carrier. W. & A. R. Co. v. White Provision Co. (Ga., 1914), 82 S. E. 644, 645.

(h) Section 22 of the Interstate Commerce Act permits an action to be brought in a state court for the wrongful failure of a terminal carrier to deliver an interstate shipment. W. & A. R. Co. v. White Provision Co. (Ga. 1914) 82 S. E., 644, 646.

(i) State courts are not without jurisdiction to interpret a tariff though it is interstate and established as required by the act of Congress. Western & A. R. Co. v. White Provision Co. (Ga. 1914), 82 S. E., 644, 646.

(j) A shipper cannot maintain an action in the courts of a state to secure reparation for excessive freights collected on an interstate shipment, where the rate charged was in accordance with the published tariff of the carrier as authorized by the Interstate Commerce Commission and no order for a refund or reparation has been made by said commission. S. A. Foster Lumber Co. v. U. P. R. Co. (Neb. 1915), 151 N. W. 168.

(k) The liability fixed by the federal statute, such as the Carmack Amendment, may be enforced by a state court. Elliott v. C., M. & St. P. Ry. Co., (So. Dak. 1915), 150 N. W. 777, 778.

(l) The determination of the reasonableness of a rule or regulation in a tariff is within the exclusive jurisdiction of the Interstate Commerce Commission, and a state court is without jurisdiction to pass upon that question, or even to consider it. So. Pac. Co. v. Frye & Bruhn, 143 Pac. 163, 166.

(m) While the Interstate Commerce Commission has exclusive jurisdiction of the reasonableness of a rate, a state court has jurisdiction of a matter involving the correct application of a published tariff. Dreyfuss v. Penn. R. Co., 153 N. Y. S., 966, 969.

(n) Congress set up the Interstate Commerce Commission and endowered it with extraordinary powers; the Supreme Court has construed the Constitution and the statutes and the state courts are held to this decision. Harris v. Southern Ry. Co. (S. C. 1915), 85 S. E. 158, 159.

VI. PRACTICE AND EVIDENCE.

See Reparation, §23.

§12. In General.

(a) In an action against an initial carrier for losses due to delay in the shipment of a carload of strawberries, it is error to refuse to allow the defendant to prove its published tariffs filed with the Commission containing regulations providing for a higher rate if the shipments were not made subject to the terms and limitations of the bill of lading. N. Y. P. & N. Ry. Co. v. Peninsula Produce Exchange (Ind., 1914), 89 Atl. 433, 437.

(b) An award of the Commission is not a judgment in the sense that it concludes the enforcement of the claim upon which it rests in a court otherwise having jurisdiction of the cause of action. The award is merely prima facie evidence of the facts contained therein in an action brought on it in a State or Federal Court; and when introduced in evidence to support a claim is open to attack and may be wholly discredited. Clark Bros. Coal Mining Co. v. Pennsyl-

vania Ry. Co. (Pa., 1913), 88 Atl. 1754, 761.

(c) Where a complaint declares on the breach of a verbal contract in regard to rates, it will be presumed, in the absence of contrary averment, that the rates charged were those included in the tariffs published and filed with the Commission, and the complaint is not subject to demurrer. St. Louis Southern Ry. Co. (Ind., 1914), 104 N. E. 512, 514.

(d) In determining the rights and liabilities of the parties to a contract stipulating for the carriage of goods in interstate commerce, the Acts of Congress and decisions of Federal Courts construing them are conclusive. Cranor v. Southern Ry. Co. (Ga., 1913), 78 S. E. 1014, 1017.

(e) Courts will not take judicial notice of the schedules of rates filed by a carrier with the Commission and published as required by Acts of Congress. Cranor v. Southern Ry. Co. (Ga., 1913), 78 S. E. 1014, 1018.

(f) Where suit is brought against a connecting carrier in interstate commerce for damage to goods delivered to it by the preceding carrier, a prima facie case is made for the plaintiff by proof of reception of the goods by the defendant and their delivery in damaged condition. Thereupon the presumption arises that they were damaged through the negligence of the carried sued. There is nothing in the Act of Congress fixing the liability of interstate carriers for loss or damage which would relieve them from this common-law presumption. A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ga., 1913), 78 S. E. 1019, 1022.

(g) In a proceeding to recover on a reparation order the finding of the Commission that the rate charged was not unreasonable and fixing the excess over the legal rate, is prima facie correct, if not conclusive; and if no evidence to the contrary is offered, and both parties ask peremptory instruction, verdict for plaintiff is properly directed. St. L. & S. F. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 594.

(h) Sections 14 and 16 of the Interstate Commerce Act, as amended by the Act of June 2, 1906, clearly distinguish suits to enforce administrative orders of the Commission, which are in equity, where the only issue is as to the legality of the order, and an action to recover reparation awarded. The latter is not a suit to enforce the order, but an action at law, triable by jury, and the proceedings are as in other civil actions, save that the findings and order of the Commission are received as prima facie evidence of the facts recited. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 792.

(i) In an action to recover reparation awarded, where plaintiff has introduced the report of the Commission, the court should instruct the jury as to what findings are and what are not made prima facie evidence by the statute. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 795.

§13. Pleading.

(a) In an action by a shipper against a carrier under Section 16 of the Interstate Commerce Act to recover for excessive charges upon which the Commission had awarded damages, an allegation that the rates collected were unjust, unreasonable and in violation of law is one largely of fact and as against a general demurrer is sufficiently specific. D. & R. G. Ry. Co. v. Baer Bros. Mercantile Co. (C. C. A., 1913), 209 Fed. 577, 579.

(b) Where a complaint in an action against an initial carrier for damages alleged to have been sustained upon a shipment of a carload of mules from Greensburg, Ind., to Atlanta, Ga., consisted of four paragraphs, the first and third counting on a common law liability, while the second and fourth counted upon a written contract, made an exhibit to each, demurrers were properly sustained to such paragraphs of the answer as set forth no facts other than those disclosed by the contract itself, save the fact that the initial carrier had no line of its own to Atlanta and that the shipper routed the shipment after it left the initial carrier's line, since with the contract in evidence these facts might have been shown under the general denial, the rule that any limitation of a carrier's common-law liability cannot be proven under the general denial having been abrogated as to interstate shipments by the Interstate Commerce Act. C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 104 N. E. 581, 583.

(c) Mandamus will not lie under section 20 to disclose privileged com-

munications between an individual and his counsel. United States v. L. & N. R. R. Co., 212 Fed. 486, 493.

(d) Since the shipper's right to recover for excessive charges made on interstate shipments depends entirely upon the rights given by the terms of the Interstate Commerce Act, it must appear from the complaints that such rates are in excess of those permitted as reasonable by the Commission. Goraty v. A. C. L. R. R. Co., 211 Fed. 227, 229.

(e) Since the Commission is charged with the duty of determining whether a charge is unreasonable, the plaintiff must, as a condition to his right to recover, allege and produce an order from the Commission that the rate charged was unreasonable and therefore illegal. Goraty v. A. C. L. R. R. Co., 211 Fed. 227, 230.

§14. Injunctions.

(a) A brewing company that tenders beer to a railroad for transportation from Oklahoma to Missouri, which the carrier refused to accept and transport does not have to first apply to the Interstate Commerce Commission for relief before asking for an injunction as that body has no jurisdiction over such a case. Royal Brewing Co. v. M. K. & T. Ry. Co. (Kan. 1914), 217 Fed. 146, 148.

CRATED SHIPMENTS

See Classification, §6½.

CREDIT ACCOUNT.

CROSS REFERENCES

See Crimes, §3; Evidence, §19; Financial Operation, §1 (u); (x).

(a) For a carrier to insist that shippers generally pay cash, while it gives long credit to another similar shipper, pursuant to a previous contract, is such discrimination as is forbidden by the Elkins Act. Giving to one shipper 4 months' time, even if interest is added, while the same privilege is denied to others, is plainly a "concession or discrimination." And it is a concession or discrimination "in respect to transportation." for these words do not pertain only to facility of transportation. Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 740.

(b) Granting long credit on shipments to one shipper while collecting monthly from his competitors is discrimination within the Elkins Act, though it is not shown that such other shippers asked or were refused similar credit. Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 745.

CRIMES.

I. THE ELKINS ACT.
§1. Constitutionality.
§2. Construction.
II. DISCRIMINATION.
§2½. In general.
§3. Credit account.
III. FREE TRANSPORTATION.
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A. Elements of Offense.
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§12. Transportation.
B. Number of Offense.
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A. Charging Elements of Offense.
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§23½. Misrepresentation.
B. Joinder of Defendants.
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VIII. DEFENSES.
§27. Former jeopardy.
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IX. PROCEDURE.
§29. Province of court.
§30. Province of jury.
§31. Extent of verdict.

X. PENALTIES.
§32. Excessive fine.
XI. STATE REGULATION.
§33. In general.

CROSS REFERENCE

See Accounting, §1 (k), §4 (a); Credit Account, (a), (b); Discrimination, §3 (i).

I. THE ELKINS ACT.

§2. Construction.

(a) The provision of the Elkins Act, making it unlawful to make any concession or discrimination whereby interstate shipments shall by any device be transported at a rate less than that prescribed in the tariffs, is in no manner narrowed or limited by the provisions of sections 2 and 3 of the Interstate Commerce Act, with reference to "unjust discrimination" and "undue or unreasonable prejudice or disadvantage." Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 742.

(b) The Elkins Act is not intended to cover differentiation between shippers so trifling in amount and inoperative in character as not to give one a real and substantial advantage over another; but if the court can say, as a matter of law, that the destination is, or might be, material and substantial, giving to the favored one a real advantage which others did not get, then it becomes forbidden within the statute. Hocking Valley Ry. Co. v. United States, 201 Fed. 735, 743.

(c) Where the evidence shows that the legal rate for grain shipped from Philadelphia, Pa., to Jacksonville, Fla., was 15c per 100 lbs. and that a 10c rate which the shipper was using was not a legal rate because the same had not been filed with the Interstate Commerce Commission, evidence is not admissable to show that the 10-cent rate had been, prior to the passage of the Elkins Act, a well-known and recognized legal rate and a conviction for rebating under the Elkins Act, based upon the using of such 10-cent rate must be sustained. Miller v. U. S., 221 Fed., 67.

(d) Evidence offered of alleged violations of section 6, apparently adduced only to show that carriers habitually overcharged shippers, is a matter for criminal proceeding. New Orleans Shippers' Asso. v. I. C. R. R. C., 34 I. C. C., 32, 33.

II. DISCRIMINATION.

§2½. In General.

(a) A contract between shippers and carrier which bound the carrier not only to transport certain cattle from Uvalde, Tex., to National Stock Yards, Ill., and deliver them in good condition by a certain hour of a certain day, but also bound the carrier to water and feed the cattle but once en route, in order that they might be very hungry and thirsty, so that they might imbibe large quantities of water just before being sold, and each beef thereby gain 50 lbs., and the "watered stock" be unloaded on the market of the National Stock Yards, was, so far as it contemplated service, not extended to everyone, discriminatory and in violation of the Elkins Act. St. L. I. M. & S. Ry. Co. v. West Bros. (Tex. 1913), 159 S. W. 142, 144.

(b) To agree with a particular shipper to expedite a shipment at regular rates, even where no rate has been established for special expediting, is a discrimination, and as such a violation of the Elkins Act of Feb. 19, 1903. Johnson v. N. Y. N. H. & H. Ry. Co. (Me. 1913), 88 Atl. 988, 991.

§3. Credit Account.

(a) Granting long credit on shipments to one shipper while collecting monthly from his competitors is discrimination within the Elkins Act, though it is not shown that such other shippers asked or were refused similar credit. Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 745.

(b) For a carrier to insist that shippers, generally, pay cash, while it gives long credit to another similar shipper, pursuant to a previous contract, is such discrimination as is forbidden by the Elkins Act. Giving to one shipper 4 months' time, even if interest is added, while the same privilege is denied to others, is plainly a "concession or discrimination." And it is a concession or discrimination "in respect to transportation," for these words do not pertain only to facility of transportation. Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 740.

III. FREE TRANSPORTATION.

§4. In General.

(a) In looking up the matter of the granting of free passes to shippers and others, the Commission had occasion to

examine the records at their general offices in Chicago of two lines extending westward into Montana. Among other records of the C. B. & Q. Ry. Co. was a file of correspondence between its general attorney and one "John T. Denvir." A man of that name was at the time a member of the Illinois State Senate, and chairman of a joint committee of both houses of the Legislature, and the letters purporting to come from him were upon stationery of the "Legislative Public Utilities Commission." The correspondence opened with a letter requesting an annual pass, and to a reply stating that the company issued no free transportation, Denvir responded with a threat of unfriendly investigation unless his demands were complied with. Upon the correspondence being called to Mr. Denvir's attention, he denied any connection with the matter, but could give no satisfactory explanation of the matter. It appeared that many requests for passes had been made on other carriers for the use of "John T. Denvir," followed up by threats of legislative investigation in case of non-compliance. Montana Pass Situation, 29 I. C. C. 411.

(b) Citizens who accept free passes sell their influence quite as much as though they accepted money bribes. In Re. Financial Relations, etc., of Certain Carriers, 31 I. C. C. 261, 264.

IV. MISBILLING.

§5. In General.

(a) Section 10, as amended by the Act of June 18, 1910, penalizing rebating, does not repeal by implication the Hepburn Act of June 29, 1906, penalizing false-billing, etc. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 590.

(b) Violation of Elkins Act is affected by false billing. Coal and Oil Investigation, 31 I. C. C. 193, 237.

VI. REBATING.

See Advanced Rates, §2½ (k); Compress Companies and Charges, (g); Divisions, §1 (k).

A. Elements of Offense.

§7. In General.

(a) While carrying at a less or different rate than the tariff rates, prohibited by section 6 of the Act is not in terms declared an offense or penalized, the same result follows from that such carrying, wilfully done, would be that failure "strictly to observe" such tariff which is expressly, by a later clause, made a misdemeanor; hence it is clear that a prosecution will lie for the offense of "carrying at a less or different rate." Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 738.

(b) Allowances under Section 15 must not be above reasonable cost of service and thereby become indirectly a rebate. Mfrs. Rd. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101.

(c) A carrier's contract to pay the shipper 20 cents per ton for services rendered by the shipper in "spotting" cars on the shipper's tracks in its yards, never published as a "terminal charge" nor in any manner except in the through rate, constitutes a contract to pay a rebate, within the prohibition of the Act to Regulate Commerce. N. Y. Cent. & H. Ry. Co. v. General Electric Co., 146 N. Y. Supp. 322, 326.

(d) The offense of giving or receiving rebates, in violation of the Elkins Act, is complete when the carrier, to whom the shipper has paid the full legal rate, pays over to the shipper, upon a claim presented by him, the amount of rebate stipulated in the agreement under which the shipmentwas made, or when a part of the legal rate already paid has been refunded. C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318.

(e) Money borrowed and loaned to coal company is a rebate. Coal and Oil Investigation, 31 I. C. C. 193, 202.

§10. Posting of Tariff.

See Tariffs, III.

(a) That the carrier failed to keep its rate sheet posted, as required by law, is no defense to a shipper who has, by accepting a settlement on the basis of a transit rate, when his shipment was only entitled to the local rate, been guilty of accepting a rebate. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 593.

C. Liability.

§15. Act of Agent.

(a) Where transit rates are wrongfully applied to shipments to the knowl-

edge of certain agents of a carrier, the carrier is chargeable with their knowledge and punishable for rebating. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 593.

VII. INDICTMENT.

A. Charging Elements of Offense.

§17. In General.

(a) An indictment sufficiently charges failure to observe a published schedule of demurrage charges, where it charges that for two years defendant delivered to a certain consignee without collecting any demurrage charges or keeping record thereof, while making such charges and keeping such record as to other shippers and consignees. United States v. Erie Ry. Co., 209 Fed. 283, 285.

§19. Description of Device.

(a) In a prosecution for rebating, it is not necessary to set forth the device resorted to to avoid the law, since it constitutes no part of the offense denounced by the Elkins Act. G. R. & I. Ry. Co. v. United States, 212 Fed. 577, 582.

C. Proof and Variance.

§25. In General.

(a) Where an indictment charges rebating stated to consist in the giving of a rebate on outbound shipments and violations of the local tariffs, while the proof shows that the rebate was on inbound shipments and violation of the transit tariffs, the variance is not fatal. G. R. & I. Ry. Co. v. United States, 212 Fed. 577, 581.

(b) Failure to prove the amounts charged in the indictment to have been paid as rebates is not fatal, since the precise sums alleged are not of the essence of the offense. G. R. & I. Ry. Co. v. United States, 212 Fed. 577, 582.

CUMMINGS AMENDMENT

See Advanced Rates, §2½ (w); Loss and Damage, I.

DAMAGES

See Cars and Car Supply, §33; Discrimination, §2 (a); Interstate Commerce Commission, §2 (f); Loss and Damage, §10½, §10¾; Reparation; Routing and Misrouting, §2 (m), §10 (b); Special Contracts, §4; Track Storage, II (c).

CROSS COUNTRY COMPETITION

See Evidence, §14 (1½).

DANGEROUS COMMODITY

See Allowances, §8 (3½) (b); Demurrage, §2½; Evidence, §17 (m), §52, §52 (h); explosives; Storage, §2 (b); §2 (k).

DELAY

See Loss and Damage, §6 (a), (b), (l), (x); §11 (i), (o).

DELIVERING CARRIER

See Courts, §6 (b); Loss and Damage, §3 (a), §5¾ (a); (b), §6 (f), §8, §11½ (a), §12 (d); Through Routes and Joint Rates, §9 (z).

DELIVERY

See Additional Charges, (f), (g); Express Companies, §2; Routing and Misrouting, §5¼ (a), (b); Transportation, §5.

DEMURRAGE

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1½. State regulation.
II. RIGHT TO ASSESS.
§2. In general.
§2½. Dangerous commodity.
§3. Discrimination.
§4. Failure of consignee to accept.
§5. Fault of shipper.
§6. One shipment in two cars.
§7. Order-notify shipments.
§8. Pending dispute.
§9. Prior to actual delivery.
§10. Private cars.
§10½. Reasonableness.
III. PUBLICATION AND TARIFFS.
§10¾. In general.
§11. Obligation to file.
IV. DEMURRAGE RULES.
§12. Construction in general.
§13. Average demurrage plan.
§14. Bunching.
§15. Free time.
§16. Placement or arrival notices.

§17. Railroad errors or omissions.
§18. Reciprocal demurrage.
§18½. Uniform demurrage code.
§19. Weather interference.

CROSS REFERENCES

See Embargo, (a), (b); Evidence, §5½ (f), §69 (b); Overcharges, (m); Reparation, §6 (e), (k), (l), (m); Routing and Misrouting, §5½ (a), §7 (e); Storage; Storage, §2 (b), (i); Track Storage.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, ..

(a) A statement by the Commission that demurrage charges assessed are properly collectible upon a certain shipment, but that the Commission has no means of determining the reasonableness of such charges and that if plaintiffs wish to pursue the matter further they will have to file a formal complaint, is not *res adjudicata* in a controversy relative to demurrage and storage charges imposed by the carrier upon a different shipment. Neustadt v. Lehigh Val. Ry. Co., 144 N. Y. Supp. 911, 915.

(b) Demurrage charges on coal cars held under load at Huntsville, Mo., found not to be with jurisdiction of Commission because not moved in interstate commerce. Northern Central Coal Co. v. Wabash R. R. Co., Unrep Op. A-707.

(c) Demurrage charges on coal cars held under load at Huntsville, Mo., not moved in interstate commerce, found not to be within jurisdiction of Commission; following court decision. Coe v. Errol, 116 U. S. 517. Northern Central Coal Co. v. Wabash R. R. Co., Unrep. Op. A-707.

II. RIGHT TO ASSESS.

§2. In General.

(a) Where a carrier's tariff provides that demurrage charges shall accrue at the rate of $1 per day per car from receipt of notice of arrival at destination, and cars are shipped to the carrier's yards at a certain point, to be reconsigned from there, delivery at the freight yards where the goods were to be reconsigned, in the absence of any other or different arrangements with the shipper or consignee, is a fulfillment of the carrying contract, and the carrier is not bound to wait for directions as to any other disposition of the commodity before its right to demurrage accrues. United States v. Erie Ry. Co., 209 Fed. 283, 284.

(b) Whether or not reconsignment itself is charged for, if cars are held proper demurrage charges may and should apply. Charles Becker v. P. M. Ry. Co., 28 I. C. C. 645, 655.

(c) On two shipments of hay to Long Dock, N. Y., complainant specifically routed one via N. Y. N. H. & H. R. R. to Harlem owing to an embargo against shipments to Long Dock. This defendant considered sufficient instructions for the second car and forwarded same via such route. Complainant accepted delivery at Harlem. HELD, not misrouting and demurrage and track-storage charges properly assessed. American Hay Co. v. B. & M. R. R., A286.

(d) Elimination of demurrage as a transportation charge against industries held to constitute an undue and unreasonable preference and advantage. Industrial Railways Case, 29 I. C. C. 212, 237.

(e) Burden is upon carrier to show reasonableness of demurrage charges, where no such charges were imposed in past. American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659. 660.

(f) Complainant's contention that the embargo should be substituted for the demurrage charges as a check for car detention not sustained. Spring Coal Co. v. N. & W. Ry. Co., Unrep Op. A536.

(g) Bill of lading containing "Southern Railway delivery" held for further notice from consignee before turning over to the Southern and demurrage charges accrued. HELD, charges were not unreasonable. Ramsey-Wheeler Co. v. S. A. L. Ry., Unrep. Op. A541.

(h) In passing on local objections to demurrage rules, the Commission may not disregard the rights and interests of shippers of other localities. Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 332.

(i) In those exceptional cases where the exigencies and peculiar nature of the shipper's business is such as to make it

more economical to hold cars beyond the free time allowed, it is only proper that demurrage for the additional delay should be charged. Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 336.

(j) Through error defendant failed to allow reconsignment at Missouri Valley, Ia., as provided for in tariffs and demurrage accrued. Reparation awarded. Currie Co. v. C. & N. W. Ry. Co., Unrep. Op. A-635.

(k) Demurrage charges on structural steel at Jacksonville, Fla., not found to have been improperly assessed, complainant being held responsible for delays in unloading. Minter & Co. v. A. C. L. R. R. Co., Unrep. Op. A-635.

(l) It is not unreasonable or unjust for carriers to require payment in addition to the regular storage for failure to unload shipments of sulphuric acid within reasonable time. International Agrl. Corprn. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201.

(m) Where nature of shippers' business is such as to make it more economical to hold cars beyond free time allowed, it is only proper that demurrage should be charged. Michigan Mfrs. Assn. v. P. M. R. R. Co., 31 I. C. C. 329, 336.

(n) Per diem which one carrier pays to another is a fixed charge per day for all days that a car is on a foreign line. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 692, 693.

(o) Demurrage or storage charges should be prescribed to prevent congestion. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C., 272, 281.

(p) Shippers to tidewater points on freight destined for further carriage by vessel which do not employ or control the lighters furnished by the railroads nor agree to furnish a berth therefor, do not render the cargo liable for demurrage and hence the carriers by inserting a charge against the steamship companies cannot make them liable for such charges. Central R. Co. of New Jersey v. Anchor Line, Ltd., 219 Fed. 716, 718.

(q) Bill of lading did not show name of consignee, and shipment of soapstone filings from Chester, Vt., to Madison, Ill., held at Lenox, Ill., awaiting notice from shipper as to whom delivery was to be made. Demurrage charges not found to have been unlawfully assessed. Eastern Talc Co. v. C. & E. I. R. R. Co., Unrep. Op. A-816.

§2½. Dangerous Commodity.

See Explosives.

(a) If it is shown that consignees can in normal times unload a dangerous commodity within the prescribed free time, there is presented reason why the commodity should be unloaded within that time. International Agrl. Corpn. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201.

(b) In an issue as to a rate of transportation, the question of degree of danger to other property in the handling, transportation, etc., of the commodity in question may be considered. But where the question is whether or not there exists necessity for special treatment of the commodity, so that danger may be avoided, the element of degree of danger does not enter into consideration. International Agrl. Corpn. v. A. & W. R. R. Co., 32 I. C. C. 199, 201.

(c) The fact that there may be other commodities just as dangerous, upon which charges in addition to demurrage are not assessed on account of failure of consignee to unload within prescribed time, does not prove that such charges should not be assessed upon a given commodity that is shown to be dangerous. International Agrl. Corpn. v. A. & W. R. R. Co., 32 I. C. C. 199, 201.

§3. Discrimination.

See Discrimination.

(a) Complainant assailed certain demurrage and dock storage charges collected on carload shipments of hay consigned to New York, N. Y., as unreasonable and discriminatory. Demurrage and dock storage charges aggregating $3,500 were collected on complainant's shipments under tariff provisions that storage charges of $1.50 per car per day would be collected on hay not removed before the next working day after arrival at its New York pier 29, and that storage at the pier would be furnished for not more than 5 cars for any one shipper, consignee or notify party, excess cars to be held at New London, Conn., or other holding points, and demurrage assessed at $1 per car per day, computing from first 7 a. m. after arrival. Most of the shipments involved originated at Canadian points and were consigned

via New London, from whence they were transported by car ferry, for a distance of 110 miles, to New York. The capacity of the ferry was 25 cars, and it made one trip daily, between 11 p. m. and 6 a. m., bringing as many cars as conditions on the pier would permit. From June 10 to June 24, 1912, the ferry service was impeded by a strike, resulting in a considerable bunching of cars. Complainant was shipping heavily at the time, and a large number of his cars, including 41 cars which reached holding points during the strike, were detained, and demurrage charges assessed on all shipments detained, except as to certain cars reconsigned. At the beginning of the strike, complainant had but 4 cars at the pier. After the strike, on certain days defendant permitted cars to accumulate at the pier, on which it charged $1.50 per day storage charges, while on other days, though complainant had no cars at the pier, it imposed demurrage charges on cars at holding points. On July 9, defendant issued an embargo against shipment of hay to New York. Defendant contended that the rule as to storage and demurrage was issued to prevent shippers from monopolizing the pier, and because of lack of storage facilities; that it restricted only the number of cars that would be stored, not the number that would be delivered; that without the rule consignees could, by allowing dock storage charges to accumulate on a few cars at the pier, obtain free storage at the holding points. Complainant having no warehouse used defendant's pier as a salesroom, and no directions for delivery were given to the carrier until a sale had been made. The shipments could have been handled as delivered if the hay had been sold before its arrival at the pier. As a result of the strike other shippers flooded the New York market, so that the price of hay fell and he had difficulty in disposing of his shipments. HELD, that defendant had justified the rule in question, and that it was not shown to be unreasonable nor to subject complainant and its traffic to undue prejudice. But no demurrage charges should have been assessed during the strike, and complainant is entitled to a refund as well, where, subsequently to the strike, demurrage charges were assessed on cars at holding points while complainant had no hay in New York, and also where cars were forwarded to New York while complainant had more than 5 cars in New York. Defendant should amend its tariff so as to provide for additional free time on account of bunching, and for notification to consignees when cars are constructively placed at holding points. American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659.

(b) Intervener, the Lumberman's Association of New Orleans, attacked the regulations relative to demurrage on forest products shipped under through bills of lading from points west of the Mississippi River and exported at that port as unduly preferential compared with the regulations governing shipments under so-called local bills of lading for export. Previous to the establishment of the existing arrangement, unlimited free time was allowed on through bill of lading shipments, while local shipments had only 10 days' free time. The arrangement was substantially in consonance with Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, in which it was held that it would constitute undue discrimination not to impose substantially equivalent demurrage charges at New Orleans and Galveston. The tariffs provided, (1) that on through shipments where order to place at unloading wharf was given before 6 p. m. of ninth day of free time, cars would be regarded as unloaded the following day if there was room on the wharf to unload; (2) that where through carrier's fault shipments did not arrive in time to load on vessel intended, free time should extend until 10 days after date set for accepting notice of arrival for next following vessel, and (3) that demurrage on through shipments loaded in a certain vessel would cease on date vessel began to take on cargo at its first loading berth. The major part of New Orleans river front is under control of the New Orleans Dock Board, which assigns wharf space to the various steamship companies, and railroads can reach the wharves only via the Public Belt, a railroad agency of the municipality. The storage yards and private docks of the railroad companies were either on the opposite bank of the Mississippi or in the outskirts of the city. While unloading of freight on these docks was controlled by the railroad companies, receipt of the unloaded freight by vessels was controlled by the steamship companies, and they might take a full cargo from the public docks, or from the private dock, or portions of a cargo

from each of several docks. Forest products arriving on through bills of lading at the carrier's private dock might be there taken by the steamship company, or might have to be switched to the public docks. Export shippers at New Orleans had no yard facilities of their own, and shipments to them on local bills of lading were held by the railroads until orders were given for forwarding to the public docks, while the local exporter might inspect, grade, and otherwise handle his shipments at New Orleans, and might, as occasion required, dispose of shipments to the domestic trade or reship to any foreign port, and via any line. In 1912 an aggregate of 4,070 cars of forest products were handled on through bills of lading, on which there was an average detention of 34.57 days; and on detention 10.9 days. HELD, that the local bills of lading, 4,352 cars, average rules applicable to through bills of lading shipments of forest products via New Orleans were not unjustly discriminatory against shipments moving to that port on local bills of lading for export. Complaint dismissed. Anderson-Tully Co. v. M. L. & T. R. R. & S. S. Co., 30 I. C. C. 140.

(c) Remission of demurrage charges to industrial roads performing a plant facility or shipper's service held to be unlawful. Industrial Railways Case, 29 I. C. C. 212, 213.

(d) Elimination of demurrage charges as a transportation charge against industries gives the industries so favored an undue and unreasonable preference and advantage. Industrial Railways Case, 29 I. C. C. 212, 237.

(e) Traffic conditions throughout the United States do not differ to such an extent as to necessitate a diversity in demurrage rules. Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 331.

§4. Failure of Consignee to Accept.

(a) Complainant failed to give reconsignment notice within tariff period and the demurrage charges collected at Lawson, Ont., not found unreasonable: Scattergood & Co. v. P. M. R. R. Co., Unrep. Op. A511.

(b) Consignee informed delivering carrier that it would accept the consignment as soon as necessary funds were available. This was repeated from time to time. No notice was sent to consignor (complainant). HELD, demurrage charges were lawfully collected. Ohio & Michigan Coal Co. v. D. L. & C. R. R. & T. Co. Unrep. Op. A518.

(c) Bill of lading containing "Southern Railway delivery" held for further notice from consignee before turning over to the Southern and demurrage charges accrued. HELD, charges were not unreasonable. Ramsey-Wheeler Co. v. S. A. L. Ry., Unrep. Op. A541.

(d) Demurrage and back-haul charges from Hammon, Okla., to Brinkman, Okla., on part carload of farm wagons, originating at St. Louis, Mo., due to shipment being rejected by consignee at stop-off point, not found unreasonable. Corporation Commission of Oklahoma v. W. F. & N. W. Ry. Co., Unrep. Op. A-828.

§6. One Shipment in Two Cars

(a) Notice of arrival of a shipment of structural steel did not properly notify complainant of the fact of transfer of the load from a wrecked car onto two other cars. Reparation claim for demurrage denied. Minter & Co. v. A. C. L. R. R. Co., Unrep. Op. A-635.

(b) Single car shipment of shingles reloaded by carrier into two open gondola cars. Commission not to determine responsibility for damage. Demurrage charges should have been assessed on basis of one-car shipment. Reparation awarded. Red Cedar Shingle Mfrs. Asso. v. M. & St. L. R. R. Co., Unrep. Op. A-880.

§8. Pending Dispute.

(a) If a car is weighed twice, with different results, shipper should be allowed, without liability to demurrage charges, sufficient time in which to examine weight of car before it is unloaded. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 36.

(b) A complainant who refuses to accept delivery pending a dispute as to the reasonableness of established rates is not entitled to a refund of demurrage charges. Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 658.

(c) If the delivering carrier demands more than the lawfully established rate, the consignee is released from the obligation to pay demurrage during the pendency of the dispute. Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 659.

(d) Complainant alleged that demurrage charges assessed for detention of two cars of lumber at Hattiesburg, Miss., shipped from Beapine, Miss., to Mobile, Ala., and dressed in transit at Hattiesburg, were unjust and unreasonable. The bill of lading was marked "care of Southern Lumber & Ice Co., Hattiesburg, for Drsg", and the shipment loaded on two cars, one of the N. O. M. & C. R. R. and the other of the G. & S. I. R. R., the originating carrier, which connected at Hattiesburg with the N. O. M. & C. R. R., which had a line to Mobile over which alone the tariff of the G. & S. I. R. R. authorized dressing in transit. The shipment was planed at Hattiesburg, reloaded on the same cars and tendered to defendant, which refused to forward it because under the rules, an N. O. M. & C. car could not be diverted from the home route. Pending the arrival of another car, demurrage accrued, HELD, that the demurrage charges were improperly assessed, since carriers owe the duty to furnish promptly equipment for shipments, and may not, under the guise of enforcing transportation rules as to return of equipment, impose undue burdens on shippers. No showing of damage appearing, reparation denied. Pine Belt Lum. Co. v. G. & S. I. R. R., 33 I. C. C. 117.

(e) As result of controvcrsy between delivering carrier and consignee respecting correctness of charges demanded, delivery was delayed and demurrage accrued. Held, unreasonable and reparation awarded. Berrum v. I. H. B. R. R. Co., Unrep. Op. A-959.

§9. Prior to Actual Delivery.

See Infra, §12, §16 (e).

(a) Bill of lading containing "Southern Railway delivery" held for further notice from consignee before turning over to the Southern and demurrage charges accrued. HELD, demurrage charges were not unreasonable. Ramsey-Wheeler Co. v. S. A. L. Ry., Unrep. Op. A541.

(b) A carrier is not entitled to either demurrage or freight charges on a shipment destined to a consignee who has a private sidetrack, until the shipments are actually placed on such track, thus completing the transportation. N. Y. N. H. & H. R. R. v. Porter, (Mass. 1915), 108 N. E., 499.

§10. Private Cars.

(a) Empty private tank car placed for loading on orders of shipper, and demurrage charges not found to have been unlawful. Lewis Mig. Co. v. D. & R G. R. R. Co., 32 I. C. C. 488, 489.

§10½. Reasonableness.

See Additional Charges, (z).

(a) Where a book of rules of the Chicago Car Service Assn. relating to liability for demurrage, together with a letter stating that the demurrage charge is $1 a day is received and placed on file by the Interstate Commerce Commission, without any objection whatever, they are, as a matter of fact, sufficiently published and filed to give notice to the public. 132 Ill. App. 302 sustained. Berwind-White Coal Mining Co. v. C. & E. R. R., 35 Sup. Ct. Rep. 131; 235 U. S. 371; 59 L. ed.

(b) Penalty in addition to ordinary demurrage charge for failure to unload within a reasonable time, not unreasonable. International Agricultural Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201.

(c) Demurrage charges should be prescribed sufficiently high to prevent congestion or to compensate carriers for such congestion. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 281.

(d) The varying demurrage allowances for different commodities are the result, generally, of commercial and competitive conditions; but there is no competition between bunker coal and other commodities which move from the port in commerce, and any comparison of their respective demurrage allowances is, therefore, improper. Basin Supply

III. PUBLICATION AND TARIFFS.

See Tariffs.

§10¾. In General.

(a) There may be no difference between free demurrage time and free storage time as used in tariffs. New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607.

§11. Obligation to File.

(a) Demurrage charges should not have been assessed, under rule that carload freight for delivery to terminal carriers in Chicago switching district will

not be delivered until freight charges are paid where joint through rate is in effect. Miller & Co. v. P. M. R. R. Co., Unrep. Op. A309.

IV. DEMURRAGE RULES.

§12. Construction in General.

(a) Where storage tracks of a railroad for cars billed to Chicago for reconsignment are at Hammond, Ind., a considerable distance from the terminals of the company nearer the center of the city, but convenient to the Belt Line by which cars can be transported to any desired new destination, and the holding on such tracks of cars consigned is in accordance with contracts which had existed for more than twenty years, the contention that the cars have not reached their destination so as to be subject to the demurrage charge is frivolous. Berwind-White Coal Mining Co. v. C. & E. R. R., 35 Sup. Ct. Rep., 131, 132, 235 U. S. 371, 59 L. Ed.

(b) Provisions for exceptional cases would rob rules of their efficiency. Michigan Mfrs. Assn. v. P. M. R. R. Co., 131, 132.

(c) Tariff containing provision that carload freight for delivery on connecting lines which performs a switching service only will not be delivered to such connecting line until all charges are paid, found unreasonable and reparation awarded. Iglehart v. P. R. R. Co., Unrep. Op. A228.

(d) Complainant held not to have been damaged by collection of demurrage charges assessed on bran from Minneapolis, Minn., consigned to Glenside, Pa., but held in transit at Lyons, N. Y., for reconsignment orders. Scattergood & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-865.

(e) Demurrage charges accruing through delay in furnishing reconsigning instructions in connection with car of cedar posts from Shelbyville, Tenn., to Grand Island, Nebr., not found to have been unlawfully collected. Jewett v. C. B. & Q. R. R. Co., Unrep. Op. A-878.

(f) The primary object of demurrage regulations is to secure the prompt release of equipment. Basin Supply Co. v. T. & F. S. Ry., 33 I. C. C. 157, 159.

§13. Average Demurrage Plan.

(a) In respect to demurrage charges, credit of one day was allowed for each car released within the first 24 hours of free time, and a debit of one day charged for each 24 hours or fraction thereof that the car was detained beyond the 48 hours of free time. Scranton & Lehigh Coal Co. v. L. V. R. R. Co., Unrep. Op. A459.

(b) The average rule is intended to take care of all bunching and weather interference. Michigan Mfrs. Asso. v. M. P. R. R. Co., 31 I. C. C. 329, 335.

(c) Computation of average detention should be made upon as fair and equitable a basis as possible. Detention time should not include the day of placement where a car is placed so late in the day as to leave the consignee no reasonable opportunity of handling it on that day, nor should the computation include the time after release of the car by the shipper. Nat. Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 695.

(d) Average rule intended to take care of all bunching and weather interference. Michigan Mfrs.' Assn. v. P. M. R. R. Co., 31 I. C. C. 329, 335.

(e) Complainant alleged that the accrual of 615 days' debits in excess of credits, on coke, under an average demurrage agreement, resulted from defendant's failure to construct a 60-foot extension to complainant's unloading track. Such track proving inadequate defendant had informally promised to promptly make the requested extension, but had delayed for over a year. But it appeared that there were other points in complainant's yard where the cars might have been unloaded. HELD, that the charges in question were not shown to have been improperly assessed. Complaint dismissed. Picher Lead Co. v. St. L. & S. F. R. R., 35 I. C. C. 45.

§14. Bunching.

(a) Where no material evidence is offered to support complainant's contention of bunching, the complaint should be dismissed. Metropolis Lumber Co. v. L. I. R. R. Co., Unrep. Op. A414.

(b) Rule providing for exemption from demurrage charges when same accrue on account of bunching required to be incorporated in tariff. American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659.

(c) The "weather rule" and its fellow, the "bunching rule," are employed constantly as pretexts for exempting favored industries from demurrage. Michigan

Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 335.

(d) Complainant attacked demurrage charges for the detention of certain cars of coal at Republic, Wash., as unreasonable, and asked reparation. Complainant shipped 6 cars of coal to Republic, with instructions to notify the N. W. P. & R. Co., located there. The latter was notified by telephone, but permitted the coal to remain on the track several days. Demurrage at $1 per day accumulated accordingly. Defendant's tariff provided consignee should be notified in writing, or, if other than written notice was agreed upon, it should be evidenced by a written request from the consignee. No written request existed. HELD, that complainant had not shown that it was damaged by failure of defendant's agent strictly to observe his instructions, nor were the charges imposed shown to have been unreasonable. Complaint dismissed. Crow's Nest Pass Coal Co. v. G. N. Ry. Co., 32 I. C. C. 479.

(e) Greatest cause of dententon of cars is lack of regularity in movement of freight. Five Per Cent Case, 31 I. C. C. 351, 412.

(f) Coal was shipped faster than consignee could take delivery and demurrage on certain cars not found unlawful. Crow's Nest Pass Coal Co. v. G. N. Ry. Co., 32 I. C. C. 479.

§15. Free Time.

(a) It is a uniform rule that in reckoning free time for the purpose of assessing demurrage charges, Sunday and legal holidays shall be excluded. New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607.

(b) Demurrage charges assessed at Canton, Ohio, on shipments of zinc ore which could not be unloaded within the free time specified in tariff because of frozen condition of the ore, found unreasonable. Grasselli Chemical Co. v. B. & O. R. R. Co., Unrep. Op. A131.

(c) In the computation of free time, when a car is ordered forward for unloading on or before 6 o'clock in the evening of a given day, the time shall be computed as though the car were unloaded during that day. Anderson-Tully Co. v. M. L. & T. R. R. & S. S. Co., 30 I. C. C. 140, 143.

(d) Free time began from the first 7 a. m. after actual or constructive placement of cars over complainant's coal pockets, and that such cars were released when unloaded and tendered by complainant to the Terminal Co. and any charges collected on time computed differently is erroneous. Scranton & Lehigh Coal Co. v. L. V. R. R. Co., Unrep. Op. A459.

(e) Proper to charge demurrage for additional delay beyond free time allowed where shipper's business makes it more economical to hold cars. Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 333, 336.

(f) In assessing demurrage against shippers who detain cars carriers compute time from 7 o'clock of morning of the day following placement of car until released. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 692.

(g) Complainant assailed defendant's demurrage rules governing shipments of coal delivered at Port Arthur, Tex., docks and intended for use as fuel on board vessels plying in coastwise and foreign trade as unreasonable and discriminatory. Defendant's tariff provided for 7 days' free time for unloading cars containing freight consigned locally to Port Arthur "for coastwise or export movements," if agent was notified within 48 hours. Defendant contended that the tariff did not cover coal intended for fuel on the vessel, it being entitled to but 48 hours' free time. HELD, (1) that the carrying of coal for use as fuel and to be consumed by a vessel engaged in coastwise or foreign trade does not constitute a coastwise or export movement of the commodity; (2) that the demurrage regulation relative to free time on bunker coal was not unreasonable or discriminatory. Complaint dismissed. Basin Supply Co. v. T. & F. S. Ry., 33 I. C. C. 157.

(h) Consignee not exempted from duty to pay or carrier from duty to collect demurrage after expiration of free time. Crow's Nest Pass Coal Co. v. G. N. Ry. Co., 32 I. C. C. 479, 480.

§16. Placement or Arrival Notices.

See Notice.

(a) Party to whom shipment was forwarded could not be located, and before complainant was notified and disposition of the car effected demurrage accrued. Not due to default or neglect of defendants, and complaint dismissed. Haas

Lumber Co. v. A. G. S. R. R. Co., Unrep. Op. A159.

(b) Complainant not notified of the arrival of car at Dothan, Ala. Reparation awarded. Dan Joseph Co. v. A. C. L. R. R. Co., Unrep. Op. A506.

(c) Complainant should have been notified within 24 hours after arrival that cars had been constructively placed. American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659, 663.

(d) Complainant alleged that collection by defendant of $32.00 demurrage charges for the detention of an empty private tank car at Colorado Springs, Colo., was not in accord with defendant's tariff and asked reparation. The car was moved under complainant's instructions from Moline, Ill., to Colorado Springs for loading by a gas company. Upon arrival it was placed near the gas house of such company convenient for loading. After laying at Colorado Springs over a month it was, on complainant's order, returned empty to Galesburg, Ill. Defendant's tariff provided for no demurrage on private cars, except where placed on carrier's or private tracks for loading on the orders of a shipper. HELD, that the car having been placed for loading upon order of complainant, it was "placed for loading on the orders of a shipper" within the meaning of the tariff. Complaint dismissed. Lewis Mfg. Co. v. D. & R. G. R. R. Co., 32 I. C. C. 488.

(e) Defendant mailed notice of arrival of a car of scrap iron at Chicago Heights, Ill., which was never received by the consignee; HELD, That the carrier's duty was performed when it placed notice in the mail and that demurrage charges were properly assessed. Refund of $1 overcharge directed. Ohio Iron & Metal Co. v. E. J. & E. Ry. Co., 34 I. C. C., 75.

§17. Railroad Errors or Omissions.

(a) Charges held to be unlawfully exacted where cars which were not subject to an embargo were detained. New York Hay Exchange Assn. v. L. V. R. R. Co., 29 I. C. C. 90, 92.

(b) Demurrage charges which accrued at Norfolk, Va., through refusal of A. C. L. R. R. to reconsign car of lumber which originated at Kenly, N. C., found unreasonable. Reparation awarded. Cranston Lumber Co. v. A. C. L. R. R. Co., Unrep, Op. A-866.

(c) Car of lumber should have been reconsigned from Norfolk, Va., to Preston, Md., at the local rate, immediately upon complainant's request. Reparation awarded for demurrage which accrued at Norfolk. Cranston Lumber Co. v. A. C. L. R. R. Co., Unrep. Op. A-866.

(d) Complainant attacked demurrage charges at Pinners Point, Va., on a carload of lumber shipped from Lamar, S. C., to Portsmouth, Va., as unjust and unreasonable. The lumber was consigned to complainant at Portsmouth, "Del. U. S. Navy Yard." The A. C. L. R. R. held out a through rate of 13c from Lamar to Portsmouth, and although the S. A. L. Ry. did not concur therein, provided for absorption of the latter's switching charges from Pinners Point to Portsmouth. The A. C. L. R. R. refused to surrender the shipment to the S. A. L. Ry. until payment of freight; and collected demurrage for the resulting delay. The U. S. government also assessed $4.51 against complainant for failure to deliver within the stipulated time. HELD (1) that the course pursued by the A. C. L. R. R. was unjustifiable, and the collection of demurrage charges was unlawful; (2) that the penalty imposed by the government being in the nature of consequential damages, recourse must be had to the courts for the satisfaction of such damages. Este Co. v. A. C. L. R. R., 34 I. C. C. 469.

§18½. Uniform Demurrage Code.

(a) The existence of merely unique or exceptional transportation conditions in certain localities furnishes no ground for exceptions being made to the uniform demurrage code in favor of such localities, unless it appear that unlawful discrimination would otherwise result against such localities if exceptions were not made. Michigan Mfgrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 336.

(b) Complainants attacked certain provisions of the uniform demurrage code applied to Michigan traffic as unreasonable and unlawful. The rules allowed two days' free time, and complainants asked that they be modified so as to allow (1) three days for unloading coal, coke, charcoal and lumber cars; (2) three days for loading or unloading cars of sash, doors, blinds, finishing material, etc.; (3) three days for loading with furniture; (4) five days for loading, weighing and billing coal, and (5) such modifi-

cation of the "average agreement" as would allow Michigan shippers the benefits of the "bunching" and "weather interference" rules. But while on the one hand, it appeared that a chronic state of congestion existed at Detroit, due to the fact that as to most of its traffic Toledo was the only gateway, on the other hand it appeared that the free time allowed by the rules afforded shippers and consignees, in addition to the time consumed in the physical loading and unloading, the necessary time to care for all reasonable shipping requirements. The following practices were shown to exist among shippers and consignees: Lumber was sorted and graded while being unloaded. cars held while part of the carload was being manufactured, carloads of coal held because of lack of room to care for the coal, furniture for shipment withheld from the central loading station until notice that the car had arrived, coal not sold until after loading. HELD, that the uniform demurrage rules, as applied to interstate shipments originating or delivered in Michigan, were not unduly prejudicial as compared with the rules operative in other localities, and that as so applied, they were neither unreasonable nor unlawful. Complaint dismissed. Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329.

§19. Weather Interference.

(a) Demurrage and track storage collected during weather which prevented unloading found unreasonable and reparation awarded. Kollyrite Trucking Co. v. P. R. R. Co., Unrep. Op. A146.

DIFFERENTIALS.

I. ESTABLISHMENT AND CONTROL.
§½. Jurisdiction of Commission.
§1. In general.
§2. Relation of classification.
II. APPLICATION.
§2½. In general.
§3. C. L. and L. C. L. shipments.
§4. Through shipments.
III. PURPOSE.
§5. To equalize conditions.
§6. To equalize consuming points.
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IV. REASONABLENESS AND DISCRIMINATION.
§8. In general.
V. REPARATION.
§9. In general.
VI. PROCEDURE.
§10. In General.

CROSS REFERENCES

See Advanced Rates, §5 (2) (g), §5 (3); Basing Points and Lines, §1 (j), (r), §3 (c); Blanket Rates, §10; Classification, §17; Evidence, §14 (1) (f), §20 (u); Special Contracts, §2 (b).

II. APPLICATION.

§2½. In General.

(a) It is a general rule that differentials should decrease as distance increases. Southern Hardwood Traffic Bureau v. I. C. C. R. R. Co., 31 I. C. C. 6, 8.

(b) The amount of a differential should vary in inverse ratio to the length of the haul. Coal Rates from Virginia Mines, 30 I. C. C. 635, 649.

(c) In establishing the relationship in rates from two groups of mines the differential between them should not correspond to the entire additional operating cost for the distance from the mines of one group up to the first point reached in the other group. Coal Rates from Virginia Mines, 30 I. C. C. 635, 649.

(d) Long-existing different bases of rate adjustment throughout different territories make a difference in the rates. Rates applying in a general section are more or less interdependent, since they must be relatively adjusted, as far as possible. The mere retention of such adjustments does not establish unjust discrimination. Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 16.

(e) Difference of 110 miles in favor of one shipping point should ordinarily be reflected by a fair difference in rate. Pueblo Commerce Club v. D. & R. G. R. R. Co., 31 I. C. C. 133, 136.

(f) Rates to eastern cities other than New York are based upon differentials under New York rate. Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 147.

(g) Contention that rates from New York, Philadelphia, Baltimore, and interior points to Bluefield, W. Va., via water-and-rail, should be certain differentials under rates via all-rail route, not sustained. Woolworth Co. v. Old Dominion S. S. Co., Unrep. Op. A-901.

(h) Complainants attacked the existing 83c scale of rail-lake-and-rail class rates from trunk line and central freight assn. territories to St. Paul, Minneapolis, Minn. as unreasonable and unduly preferential to Duluth, Minn. The Commission also considered the proposed 90c scale of class rates to the twin cities over the rail-lake-and-rail-lines. The rate to Duluth was 62c and the real point in issue was as to what was a reasonable scale of differentials, twin cities over Duluth; the former contending that the 21c scale was unduly prejudicial to their interests, and Duluth contending that those differentials were too low depriving it of the benefits of its location at the head of the lakes. Carriers proposed the 90c scale, not for additional revenue, but as a compromise, between the extreme demand of Duluth for rates equal to the sum of the locals to the twin cities, and the contention of the latter for the 15c differential formerly effective, it being the policy of the carriers to develop the twin cities as the point of commercial supremacy in this part of the northwest. On hauls from New York to Missouri River crossings, 1425 miles, a proportional of 55c was prescribed for the haul of 325 miles between the rivers; as compared with the differentials of but 15c formerly voluntarily charged by carriers on the 150 mile haul from Duluth to the twin cities, part of the 1546 mile rail-lake-and-rail-haul, New York to the twin cities. HELD, (1) that the 83c scale of rates was not unreasonable nor discriminatory against the twin cities; (2) that the 21c scale of differentials was not prejudicial to them or preferential to Duluth; (3) that the proposed 90c scale of rates had not been justified; (4) that any scale in excess of 83c, trunk line and central freight assn. territories to the twin cities, would be unreasonable; (5) that the proposed 28c scale of differentials would be unduly discriminatory against the twin cities, as would any scale in excess of 21c; and (6) that any scale of differentials below 21c would be unduly discriminatory against Duluth. Principles announced to apply as well to community rates to the twin cities. The Twin Cities Cases, 33 I. C. C., 577.

§4. Through Shipments.

See Thru Routes and Joint Rates.

(a) In making joint through rates on long-distance traffic to local or non-competitive points, differentials above rates to basing points should bear some reasonable relation to total distances involved. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 165.

(c) Difference should not exceed 5 cents per ton between rates applicable to through routes and to single line from mines. Hughes Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10, 14.

III. PURPOSE.

§5. To Equalize Conditions.

See Equalization of Rates.

(a) Complainants attacked the rates on lumber rehandled at Louisville, Ky., while on its way from producing territory in the south to destinations in Central Freight Association and trunk line territories, as unduly prejudicial compared with rates on lumber rehandled at other Ohio River crossings, notably Cincinnati. Lumber from small mills unable to land their product is shipped to rehandlers at the crossing points, where it is unloaded, sorted according to kinds, grades and dimensions, and then shipped out as required by the consuming trade. The through rates from points of origin to final destinations were not attacked, but only the combinations of locals to and from the rehandling points. Discrimination was alleged: (1) Because combinations of rates from equi-distant points in southeastern territory to equi-distant points in Central Freight Association territory via Louisville were greater than via cities on the north bank of the Ohio River, and (2) because combinations from Mississippi Valley territory to western termini (Pittsburgh, Buffalo, Wheeling and Erie) and trunk line territory, including seaboard cities, were greater via Louisville than via Cincinnati. Louisville's disadvantage was alleged to be due largely to the fact that lines north of the river charged a bridge toll at Louisville, which was reflected in rates to points north, while at Cairo, Ill., Evansville, New Albany and Jeffersonville, Ind., and Cincinnati, O., carriers south of the river absorbed the bridge toll in making rates to these points; and also that carriers north of the river charged no bridge toll on shipments from Covington and Newport, Ky., opposite Cincinnati. Ohio River Crossings. Louisville had the same rate as

north-bank cities from equidistant points. Its competition as a rehandling market for lumber produced in southeastern territory is strongest with Cincinnati. The roads hauling out of Louisville charged a 1c bridge toll; hence rates to equidistant territory north were 1c higher from Louisville than from north-bank points. Rates from Chattanooga, Friendsville, Greenville, Oneida, Sequatchie, Jellico Plains and Wilder, Tenn., and Oostanaula, Summerville and Wildwood, Ga., points equidistant from Louisville, Cincinnati and New Albany, were the same to Louisville as to Cincinnati, except that in two instances it was 1c higher. From New Albany and Cincinnati rates were 1c lower than from Louisville to the following equidistant points north of the river: Anderson, Indianapolis, Logansport and South Bend, Ind.; Bay City, Benton Harbor and Mackinaw, Mich., and Chicago, Peoria, Quincy and Springfield, Ill. To a few points in Illinois and to certain western termini Louisville paid no bridge toll, certain lines taking freight from New Albany and Jeffersonville via Louisville being precluded by the fourth section from making Louisville rates higher than those from those cities. The result of the combinations of locals to and from Louisville was that between equidistant points of production and consumption Louisville was at a disadvantage in freight rates of 1c as compared with north-bank points. While this situation was in part covered by the decision in Norman Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 239, the question of bridge tolls was expressly reserved for future consideration. The application of the Cincinnati rate from Covington and Newport was the result of absorbing the switching charge from these points, which are within the Cincinnati switching district. This absorption applies to all traffic, both classes and commodities. There are no rehandling yards at Newport or Covington, dealers at these points supplying local demands only. The C. C. C. & St. L. R. R. provided transit at Ivorydale, Cincinnati, because on traffic originating in certain sections of the south the southern roads do not absorb the switching charge for its interchange at Cincinnati. A charge of $3 per car is made for the transit privilege, making the net charge in excess of the Cincinnati combination $3 a car transit instead of $5 a car switching. There is no tariff on file providing for this transit privilege. Both the C. C. C. & St. L. Ry. tariff, and that of the B. & O. S. W. R. R. providing for similar transit privileges at Cincinnati were objectionable as ambiguous and capable of possible interpretation favoring the rehandler at Cincinnati. Bridge tolls on lumber at Ohio River crossings were:

From—	Local	Through
Louisville, Ky., to New Albany, Ind.	2	1
Louisville, Ky., to Jeffersonville, Ind.	2	1
East Cairo, Ky., to Cairo, Ill.	3	2
Covington, Ky., to Cincinnati, Ohio (C. & O. Ry.)	3	(1)
Newport, Ky., to Cincinnati, Ohio (C. & O. Ry.)	3	(1)
Paducah, Ky., to Brooksport, Ill. (I. C. R. R. via ferry)	3	2
Henderson, Ky., to Evansville, Ind.	3	1
Covington, Ky., to Cincinnati, Ohio (L. & N. R. R.)	3	1
Newport, Ky., to Cincinnati, Ohio (L. & N. R. R.)	3	1

HELD, that the rates on lumber from equidistant southeastern territory to Louisville should be 1c less than those contemporaneously maintained to Cincinnati, New Albany, or other north-bank Ohio River crossings. Southern carriers cannot elect to absorb all or part of the bridge toll on traffic to north-bank points if to do so results to the undue prejudice and disadvantage of south-bank points. Should the lines north of the river elect to remove the discrimination in favor of Covington and Newport by eliminating the bridge toll in the rates from Louisville, no change will be required in rates to Louisville from equidistant southeastern points. **Rates on Mississippi Valley Lumber Rehandled at Ohio River Crossings.** From a large part of the Mississippi Valley territory the short line distance to Cincinnati is through Louisville, and is, consequently, 114 miles greater than the distance to Louisville. From producing territory north of the line of the A. & V. Ry. the differential against Cincinnati was 3c; from points south of the line 2c. From Louisville to western termini and trunk line territory the short-line distance is through Cincinnati, and greater than the distance from Cincinnati. For this difference the differential against Louisville was almost uniformly 3½c. For instance, from Natalbany, La., to Baltimore, Md., the combination via Louis-

ville is 38.5c and via Cincinnati 37c, a difference of 1.5c in favor of Cincinnati; from Enid, Miss., to Bessemer, Pa., the combination via Louisville is 30c and via Cincinnati 29c, a difference of 1c in favor of Cincinnati; and from Houston, Miss., to Rochester, N. Y., the combination via Louisville is 35.5c and via Cincinnati 33.5c, a difference of 2c in favor of Cincinnati. While the distance between points of origin and consumption is the same via either crossing, the combination on Louisville is in every case higher because the roads south of the Ohio decreased the differential as the distance increased, while northern and eastern carriers maintained the same differential for small and great distances. The local rate from Louisville to New York was formerly 25c, and from Cincinnati 21.5c; fixed by the percentage scale applying between Central Freight Association and trunk line territories. Proportional rates from Louisville and Cincinnati were 22.5 and 19c, respectively, creating the same spread of 3.5c; and these proportionals were, in 1902, made the local rates. Southern carriers give Louisville the same rate as Cincinnati in some cases and in others a 2c, 3c or 4c differential under Cincinnati; to equalize which on the outbound haul northern roads would have to carry four sets of differentials. Although the distance from Louisville to western termini and trunk line territory is greater, the revenue per-ton-mile is higher than those prevailing from Cincinnati to the same points. For instance, from Louisville to Buffalo, N. Y., a 14c rate yields 5 mills per-ton-mile for a distance of 560 miles, as compared with a 10c rate from Cincinnati to Buffalo, yielding 4.48 mills per-ton-mile for a distance of 446 miles. In almost every instance the revenue per-ton-mile from Mississippi Valley points is greater to Louisville than to Cincinnati, although the haul to the latter is greater by from 87 to 114 miles. Thus, from Holly Springs, Miss., to Louisville, a rate of 15c yields 7.33 mills per-ton-mile for a haul of 409 miles, as compared with a rate of 18c from Holly Springs to Cincinnati, yielding 6.88 mills per-ton-mile for a haul of 523 miles. From many Mississippi Valley producing points the distance to Louisville is 225 miles in excess of the distance to Cairo, but the spread in rates between the two points is in some instances 3c and in others 5c. HELD, that while the present differentials may be proper for western termini and trunk line points, points within 500 miles from Cincinnati should not exceed the rates from Cincinnati by more than 2½c. Rates from Mississippi Valley territory to Louisville should be 3½c less than those contemporaneously maintained to Cincinnati from points with 500 miles of Louisville, and 2½c less from points at a greater distance. On the movement from Mississippi Valley territory to Central Freight Association territory via Cairo and via Louisville the disparity in rates via the two crossings is in some cases too great. The spread from producing points in the South should be uniform for the same difference in distances to Cairo and Louisville. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C., 565.

(b) Generally speaking, rates from all the river crossings to Columbia and Augusta are constructed with reference to through transportation from more distant points or origin. Differentials to the various crossings are the results of efforts by the carriers to equalize the through rates from any particular point of origin via any reasonably direct or practicable gateway on either river. Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C., 339, 342.

(c) Complainant attacked the rates on Portland cement from Ada, Okla., to all points in Louisiana west of the Mississippi River and to the southern part of Arkansas and in eastern Texas, as excessive compared with rates from competing localities. In a general way the basis of rates suggested by complainant contemplated a rate of 15c to most of the points in the southern portion of Arkansas and northern Louisiana intermediate to Shreveport, to Alexandria and to Monroe, which points had a 15c rate, fixed by the Commission in Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co., 24 I. C. C. 158, and a rate of 20c to the majority of points in southern Louisiana, with graded rates to the points lying between the 20c territory and the 15c territory. To the majority of destinations the rates suggested were a differential of 5c under the present rates from Iola, Kan., and St. Louis, Mo., but to many points the differential would be 2c, particularly in the northern part of the territory involved, where the difference in mileage was less strongly in favor of Ada. Complainant met competition from Iola and other points in the Kansas Gas Belt; with Harrys, Tex., a point near Dallas; with plants in the vicinity of

Kansas City, Mo., and at Hannibal, Mo., St. Louis, Mo., and Eagle Ford, Tex. Most of the destination points were located on the allied lines of the M. P. Ry., on whose lines were also located most of the plants in the Kansas Gas Belt. Ada is on the line of the St. L. & S. F. Ry. and the M. K. & T. Ry. It is about 80 miles north of the Red River, 85 miles southeast of Oklahoma City and about 100 miles from the Arkansas state line. It is also served by the Oklahoma Central Railroad, in connection with the Rock Island and St. L. & S. F. R. R. Co. and M. K. & T. Ry. The distance from Ada is less in almost every instance than from the competing points, ranging from 100 to nearly 200 miles less than from any other mill in the Kansas Gas Belt, which difference is augmented when comparison is made with Kansas City, St. Louis and Hannibal. The rates from Ada are generally the same as from Iola and other points in the gas belt and from Kansas City, St. Louis and Hannibal. There are a number of points to which the rates from Ada are materially higher than from competing points, although the distance from Ada is less. To a number of other destinations on the St. L. I. M. & S. Ry. there are no through rates and the lowest combinations are prohibitive. The Kansas gas belt rate group originated with Iola, being extended to the other points, including Ada. While Ada is grouped with these points to certain destinations, it is placed on an arbitrary of 5c higher than the other points to the northern destination points. HELD, such a system of rate making is wholly illogical and discriminatory. It takes from Ada the advantage to which it is entitled by reason of its location as to certain destinations, while it receives no corresponding assistance to those points at which it is at a disadvantage; that rates should be established placing Ada on a differential of 3c under the Kansas Gas Belt rate with respect to the destination points in southern Arkansas, and a 2c differential with respect to the Louisiana and Texas points; that the St. L. I. M. & S. Ry., which has heretofore not maintained such through routes, be required to establish through routes from Ada to the destination points to which it operates through routes from the Kansas gas belt; inasmuch as maintaining through routes from one section and not maintaining such routes from other sections, where a prejudicial difference in rate is thereby effected, is such discrimination as the Act was intended to meet. Oklahoma Portland Cement Co. v. O. L. & G. Ry. Co., 32 I. C. C. 221.

§6. To Equalize Consuming Points.

See Equalization of Rates, §3.

(a) Complainants attacked the rates existing from Aug. 1, 1911, to April 1, 1913, on hides and pelts from Oklahoma City, El Reno, Guthrie, Tulsa, and McAlester, Okla., to St. Louis, Chicago and Milwaukee, as unreasonable and discriminatory, compared with defendant's rates on like traffic from Fort Worth, Tex., Wichita, Kan., and other points of origin to the same and other destinations, and asked reparation upon the basis of rates established April 2, 1913. Intimations by the Commission in investigation of unreasonable rates on meats, 22 I. C.C. 160, dealing with rates on meats from the same points, led to three successive reductions in rates on hides and pelts, concluding with the rates of April 2, 1913. The four successive rates from Fort Worth, Oklahoma City and Wichita, respectively, to St. Louis, may be taken as typical: Fort Worth, 720 miles, rates 42c, 37¼c, 37¼c, and 32¼c, yielding per-ton-mile revenue of 1.166, 1.034, 1.034 and .895c; Oklahoma City, 543 miles, rates 39c, 39c, 33¼c and 28¼c, yielding per-ton-mile revenues of 1.436, 1.436, 1.224, and 1.040c; Wichita, 479 miles, rates 24½c, continuously, yielding ton-mile revenues of 1.022c. Complainant contended that prior to the last rate adjustment the spread of the rates between Wichita and Oklahoma City was too great, and between Oklahoma City and Fort Worth too small; while the distance from Oklahoma City to St. Louis was but 64 miles greater than from Wichita to St. Louis, its rate increased by 4¼c, whereas for an increase of 177 miles from Fort Worth to St. Louis over the distance from Oklahoma City to St. Louis, the rate increased but 4c. In the case cited the Commission prescribed a spread of 3c between Wichita and Oklahoma City and 5¾c between Oklahoma City and Fort Worth, while the rates finally established were still not entirely just to Oklahoma City. In reality, complainants sought the establishment of the rates fixed in 22 I. C. C. 160, on packing-house commodities shipped from the same points of origin to the same destinations. Oklahoma City enjoys no offset to the higher rate charged therefrom as a concentrating point than is charged

from Wichita and Fort Worth. For an average haul of 211 miles from Kansas points to Kansas City the rate is 12c as compared with 13.8c for an average 83 mile haul to Oklahoma, and 11c to Fort Worth from points 85 miles distant. To Chicago through Kansas City the rates from Kansas points for average distances of 694 miles was 32c; from Oklahoma points through Kansas City to Chicago 54c for 901 miles, as compared with 57.8c for 905 miles via Oklahoma City, and 55¼c for 1,094 miles from Texas common points via Fort Worth to Chicago. In Western Classification hides and pelts are, in the absence of specific rates, throughout the territory involved, rated with packing-house products, and in Official Classification Territory green hides and pelts take fifth class, as do most packing-house product articles. Hides and pelts load heavily, can be loaded in any kind of box car, no expedited service is required, and the risk of loss or damage is slight. HELD, that the rates from Oklahoma points to St. Louis, Chicago and Milwaukee were unreasonable to the extent that they exceeded the contemporaneous rates on packing-house products, and should be reduced to the packing-house scale, giving a spread of rates of 3c per 100 lbs. between Wichita and Oklahoma City and 5¼c per 100 lbs. to Fort Worth. Reparation awarded. Crodus Bros. v. A. T. & S. F. R. R. Co., 29 I. C. C. 449.

(b) Complainant attacked the rates on lumber from Mississippi and Louisiana and Arkansas south of the C. R. I. & P. Ry., from Memphis, Tenn., to Little Rock, Ark., to Paducah, Ky., as unreasonable and discriminatory compared with rates from 1c to 6c per 100 lbs. lower from the same territory to Cairo, Ill. Paducah and Cairo were practically equidistant from the territory in question. East of the Mississippi River and north of A. & V. Ry. line from Vicksburg to Meridian rates to Cairo and Paducah are the same, while from points south they are generally 2c higher to Paducah. Northern Mississippi is predominatingly hardwood, southern Mississippi is mainly pine. It was contended that the hardwood area was affected by water competition from proximity to the Cumberland, Tennessee, Mississippi and Ohio rivers, which, controlling the rates to Cairo and Paducah, made them the same to both, while the competition of railroads west of the Mississippi and of other pine-producing sections controlled rates from the more southern area. But it appeared that there was too much variation in rates from both areas not only between hardwood and pine, but also between cottonwood and gum and other hardwoods. The rates to Cairo from the Mississippi Valley, east of the river, was lower than that from any other lumber-producing section; lumber from the southeast did not compete at Cairo, and, in fact, the only section which did compete was that located west of the river in Louisiana and Arkansas, though even from that district the rates were 2c higher than from the pine territory east of the river. Paducah not only paid higher inbound rates than Cairo on lumber; her outbound rates to points north of the river were 2c higher, equaling the amount of the bridge toll. Thus, as a rehandling point, Paducah was at a disadvantage of 2c per 100 lbs. on lumber coming from hardwood territory and of 4c on that coming from the pine territory east of the Mississippi. From points in the lumber-producing territory west of the Mississippi River, the rates to Paducah exceeded those to Cairo by a greater amount than from points east of the river, being combinations of the rate to Cairo plus the Illinois Central local of 6c to Paducah. This involved crossing the Mississippi River at Thebes and the Ohio River at Cairo. The short line distance to Paducah was via Memphis, and was from 40 to 60 miles shorter than the distances via Cairo. HELD, that defendants operating east of the Mississippi should maintain rates to Paducah no higher than 1c below those contemporaneously maintained from the same points to Cairo, and that those operating west of the river maintain rates no higher than those maintained to Cairo. Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583.

§7. To Equalize Producing Points.

See Equalization of Rates, §3, §7.

(a) Complainants attacked the rates on pig iron from the south to Ohio River crossings and points north and east thereof, all-rail, and to New England, all-rail and rail-and-water, as unreasonable and discriminatory, compared with rates on other commodities and on pig iron in other sections. Birmingham, Ala., was taken as a representative southern point

of origin; Louisville, Ky., as representative of the Ohio River crossings; Chicago as illustrative of Central Freight Association territory, and Boston as typical of the East. Local rates from Birmingham to Cincinnati, Louisville, Evansville, Cairo, St. Louis, Chicago and Detroit were respectively, $3.25, $3.00, $3.25, $3.25, $3.75, $4.35 and $4.50 for distances of 481, 394, 364, 333, 486, 651 and 747 miles, and proportional rates to the first four points were $2.90, $2.65, $2.75 and $2.75. Rates from Birmingham to Boston, Providence and New York were, all-rail, $6.40, $6.40 and $6.15 for distances of 1,242, 1,215 and 1,027 miles; and rail and water, $4.60, $4.60 and $4.25 for distances of 726, 726 and 676 miles. Prior to April, 1907, the rates were changed from time to time to adjust them to the market price of iron. On that date the rate to Louisville was fixed at $3.00 per ton, which rate has been maintained unchanged though iron had on that date reached the record price of $22.50 per ton, and had never during the last four years reached two-thirds of that figure. Compared with the entire pig-iron production of the country, that contributed by the southern furnaces has decreased relatively, but there has been a steady increase in actual tonnage. Shipments from the South to northern, eastern and western destinations have declined, but there has been an increase in shipments of southern iron to southern points, and in consumption of pig iron at southern plants. Birmingham obtains all its raw materials at its own doors, but must transport its iron considerable distances, while furnaces in the middle West, while shipping in their raw materials from considerable distances, manufacture their iron almost at points of consumption. To some sixty representative points in Central Freight Association territory the average rates per ton from Birmingham, Ala., Portsmouth, O., Wheeling, W. Va., Pittsburgh, Pa., and Youngstown, O., were respectively $3.70, $1.69, $2.17, $2.17 and $1.86, yielding 6.1, 5.77, 6.15, 5.59 and 5.28 mills per ton mile, for distances of 606, 293, 353, 388 and 352 miles. Rates from Birmingham, Ala., and Pittsburgh, Pa., to Chicago were respectively $3.88 and $2.46, yielding 5.96 and 5.26 mills per ton mile and 18.023 and 15.9c per car mile, for distances of 651 and 468 miles. Pig iron is loaded mostly in box cars, but cars rejected for other traffic may be used. To Boston the short rail-and-water route is via Savannah, and the rate from Birmingham $4.60 per gross ton, yielding 5.66 mills per ton mile for 726 constructive miles. Rail carriers operating through Norfolk, Va., having a longer rail haul, receive a lesser revenue per ton-mile. Rates to interior New England points were made the full combination of rates to and from New England ports, plus handling charges, which to Springfield and Lowell, Mass., and to Portland, Me., aggregate $6, $5.85 and $6 per ton gross. At Boston the charge was 40c per ton, at Providence 10c per ton. Rates from Boston to Springfield, Lowell and Portland were $1, 85c and $1 for distances of 99, 26 and 115 miles. HELD, that existing rates from the Birmingham district to Louisville, St. Louis, Chicago and Boston were unreasonable, and rates to such points should not exceed $2.65, $3.40, $4 and $4.25. Present differentials between southern furnaces should be maintained, as should also the relation of rates obtaining to the Ohio River to points in Central Freight Association territory, and to the East. No change in proportionals to the Ohio River ordered, because this would throw entire reduction on southern lines. Proportionals to and from the crossings should be revised so as to make the through rates accord with the rates designated above. Existing rates to New England interior points are unreasonable. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597.

(b) The Commission considered the relationship in rates on coal to points north of the Ohio River, of the St. Charles and Appalachia groups of mines in southwestern Virginia, the mines at Benham, Ky., and the Middlesboro-Jellico group in southeastern Kentucky and northern Tennessee; all served by the L. & N. R. R., lying southeast from Brush Creek, Ky., on various branches of that line. The distance from Brush Creek to Cincinnati is 147 miles, from La Follette, Tenn., the most southern point in the Middlesboro-Jellico group, 238 miles, from Middlesboro 231 miles, from Ages, Ky., 267 miles, from St. Charles 279 miles, from Appalachia 294 miles, and from Benham 279 miles. The distance to Louisville is fifteen miles less than that to Cincinnati. The St. Charles and Appalachia groups lie east of Middlesboro and the Benham group east of Ages. The St. Charles and Appa-

lachia groups lie east of the Appalachian water shed, the other groups to the west of it. Rates from the St. Charles group to destinations south of the Ohio are 5c, 10c and 20c, respectively, above the rates from La Follette, Middlesboro and Jellico, and Brush Creek mines, while as to destinations north of the Ohio, St. Charles is on the Middlesboro-Jellico basis. Rates from the Appalachia and Benham mines are 10c to 25c per ton higher than rates from the St. Charles and Middlesboro-Jellico mines. The tariff under suspension proposes many reductions from the Middlesboro-Jellico and Benham groups to points north of the Ohio River, and in general increases the spread between the St. Charles and Appalachia groups. But no change in the differential St. Charles over Middlesboro is proposed as to destinations south of the Ohio River, and as to points north of the river, no uniformity is observed in fixing the differential. Rates to points east of the Illinois-Indiana state line where no differential is proposed between the St. Charles and Middlesboro-Jellico group, are: from Middlesboro-Jellico and St. Charles to Temperance and Owosso, Mich., and Aurora and Seymour, Ind., $1.46, $1.81, $1.20 and $1.50 and from the Kanawba, W. Va., group, $1.40, $1.80, $1.20 and $1.50. And to points west of that line: from Middlesboro-Jellico and St. Charles to Pontiac, Alton, Quincy and Girard, Ill., $1.95, $2.20, $2.32 and $2.20, and from the Kanawha group, $2.10, $2.35, $2.52 and $2.35. Differentials are proposed in the following cases: To Oberlin, O., Erie, Pa., and South Bend, Ind., the present rates from the Middlesboro-Jellico and St. Charles groups are $1.60, $1.90 and $1.90; the proposed rate from St. Charles $1.60, $1.90 and $1.90; proposed rate from Middlesboro-Jellico $1.48, $1.65 and $1.80; and the Kanawha rate $1.45, $1.90 and $1.80. The proposed relationship between the Middlesboro-Jellico mines and the Kanawha mines is 15c below the rates from the latter to points in Illinois and approximately the same rates to points in Ohio, Michigan and Indiana. The annual production of coal in the St. Charles field is from 400,000 to 500,000 tons, and the total investment $1,000,000. The greater portion of coal shipped from the field moves via Cincinnati. Thus in 1912 the total shipments beyond the river via Cincinnati were 75,489 net tons and via Louisville, 10,043 net tons; and the total westward shipments were, via Cincinnati, 118,477 tons, and via Louisville, 44,001 tons. Nevertheless, the Cincinnati route is the more expensive, the average revenue via Louisville being $1.03 as against 91c, or 3.599 mills per ton-mile as against 3.012 mills. Operating results on this traffic are not satisfactory, chiefly because of the excessive cost of operation over the Cincinnati route. The total operating cost of the coal traffic from St. Charles to Middlesboro is from 61.12c to 21.68c per net ton. HELD, that a maximum differential St. Charles over Middlesboro-Jellico group of 10c per ton would be just and reasonable to points north of the Ohio River within 400 miles of St. Charles, being a fair relation to the out-of-pocket cost which the St. Charles traffic occasions to the carriers between Pennington and Middlesboro. Beyond that the differential should decrease not less than 1c for each additional 100 miles. Rates from the Appalachia group and the Benham mines should not exceed rates from the Middlesboro-Jellico group to points north of the Ohio River by greater amounts than present differentials, provided that Jellico should in no case be lower than the differential St. Charles over Middlesboro-Jellico. Coal Rates from Virginia Mines. 30 I. C. C. 635.

(c) Complainant attacked rates on potatoes and onions, C. L., from St. Matthews, Ky., and stations in the vicinity to points in C. F. A. territory, which rates were from 2c to 5c higher than from Louisville, Ky. The points of origin (St. Matthews, Beechwood, Lyndon, Marcia, Lakeland, Forest, O'Bannon) are near Louisville, St. Matthews being 1½ miles distant and the farthest 12 miles away. Traffic to points east of the Indiana-Ohio state line moves via Cincinnati, O.; while to points in the western part of C. F. A. territory, the Mississippi Valley, southeastern and southwestern territories, the movements are via Louisville. Shipment is made via the L. & N. R. R. It is claimed that the rates from the originating group to Cincinnati and points beyond should not exceed the rates from Louisville to such destinations, the originating stations being between Louisville and Cincinnati; that for the haul to Louisville, as a part of the haul to points north thereof, the rates should not exceed the Louisville rates by more than 2c or 3c, instead of

the full local rates, or from 5c to 7c, and that no differences are justified in the rates to the south, where the L. & N. R. R. receives a long haul. In 1910 complainant shipped 389 cars of a total of 1,000; in 1911, 339 cars, and in 1912, 535 cars. The lower rates from Louisville were justified on the ground of water and rail competition, Louisville being situated on the Ohio River and being served by several railroads. By way of illustration, the rate to Akron, O., from Louisville was 17.5c; from St. Matthews 19.5c; from Lyndon 21.5c; from O'Bannon 22.5c. The rates from Louisville to Cincinnati are the same by rail as by water. Evidence that the rail rate was compelled by water competition. The shipping points involved have no water competition. It appeared that the rates to C. F. A. territory are fixed by the northern lines and by water competition and that the L. & N. R. R. has adopted these rates from Louisville to the extent that it can compete via Cincinnati. As to rates to points in C. F. A. territory and the west through Louisville: The rate to Bedford, Ind., from Louisville is 10.5c; from St. Matthews, 15.5c; from Lyndon, 16.5c, and from O'Bannon, 19.5c. (The last two rates were reduced 1c and 2c, respectively, after the filing of the complaint.) The distance from the L. & N. R. R. station in Louisville to St. Matthews is 5 miles and the rate 5c; distance to Lyndon 8 miles and the rate 5c; distance to O'Bannon 13 miles and the rate 7c. These local rates are added to the rates from Louisville to destination. The distances to the Southwest, as embraced in the complaint are greater, the haul being from 800 to 1,000 miles. From St. Matthews to Americus, Ga., 634 Miles, the rate is 43c; from Lyndon, 44c, and from O'Bannon, 46c, while via the Southern Ry., from stations in the vicinity and with a distance of 642 miles, the rate is 41c. Via the I. C. R. R. from points in the same vicinity the rate for 765 miles is 41c. HELD, while distance is not the sole factor to be considered, it is manifest that the application of the full locals as parts of the through rates is unreasonable and unjustly discriminatory; that on shipments to C. F. A. territory and points west through Louisville, the local rates to Louisville applied as parts of through rates from St. Matthews, Beechwood, Warwick Villa, Lyndon and Marcia should not exceed 3c, and from Lakeland, Anchorage and O'Bannon, 5c; but in view of the active water competition and other conditions with reference to the rates to C. F. A. territory through Cincinnati, such rates are not found to be unreasonable or to result in unjust discrimination. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233.

(d) Complainant attacked the rate of $2 per gross ton on bituminous slack coal in carloads from mines in the Fairmont region of West Virginia and the Westmoreland region of Pennsylvania to the Martins Creek, Pa., group of cement plants, as unreasonable and discriminatory compared with a rate of $1.85 to the Evansville, Pa., and $1.95 to the Allentown, Pa., groups; and asked that a differential in rates be established between slack and other grades of bituminous coal. On a five line haul from the Fairmount the $2 rate yielded 4.75 mills per gross ton-mile, for 423 miles. While the haul, 420 miles, from the Westmoreland region was by a single line, the carrier absorbed $1.80 switching charges per car. From the Fairmount region to Evansville the distance was 352 miles, via a three line haul; to Allentown, 383 miles, via a four-line haul. A rate of $2 applied from Mermanie to Trenton, N. J., 359 miles; and $2.10 from Hermanie to Jersey City, 468 miles. There was an established relationship in rates between the bituminous coal regions east of the Ohio River, and the reduction asked would necessitate a readjustment to points east of Harrisburg, presumably from all regions. While of less value, the loading of slack was substantially lighter than that of other varieties of bituminous coal. HELD (1) that the existing adjustment of rates on bituminous coal from the Fairmont and Westmoreland regions was not shown to be unreasonable or discriminatory and (2) that there appeared neither commercial nor transportation necessity for requiring the establishment of a differential between slack and other bituminous coal. Complaints dismissed. Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414.

IV. REASONABLENESS AND DISCRIMINATION.

See Discrimination; Reasonableness of Rates.

§8. In General.

See Advanced Rates, §5 (4), (1); Classification, §16 (a); Evidence, §15½ (d).

(a) When differentials are not disproportionate to differences in transportation conditions, higher rate on salt in packages than on salt in bulk not unreasonable. Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 42.

(b) Differentials above rates to basing points may be higher where long-haul traffic to local stations is meager. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 165.

(c) Adding to competitive rates to basing points differentials or arbitraries, which, as component parts of joint through rates, are excessive when total length of haul is considered on rates to noncompetitive points and not adding such differentials to competitive points, held to constitute undue prejudice. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 167.

(d) In making joint through rates on long-distance traffic to local or noncompetitive points, differentials above rates to basing points should bear some reasonable relation to total distances involved. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 165.

(e) All-rail and ocean-and-rail routes are result of competition between ocean carriers and trunk lines for control of traffic from eastern ports and interior eastern points to the southeast. Atlanta Journal Co. v. S. A. L. Ry. Co., 28 I. C. C. 186, 188.

(f) Differentials may be established for different distances. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 264.

(g) The fact that uniform differentials are observed to other territories, while to Oklahoma the differences vary, furnishes, of itself, no justification for a change in the Oklahoma rates, but may have some bearing in determining reasonableness. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 685.

(h) Contention that because of differential on other carload traffic between Little Rock and Fort Smith, reduction should have been made on bananas, not sustained. Arkansas Fruit Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A304.

(i) Constructing rates to certain points on basis of arbitraries should be continued. Mississippi River Case, 29 I. C. C. 530, 534.

(j) Complainant attacked the rate of 17c per 100 lbs. on petroleum road oil and tailings from Okmulgee, Okla., to St. Louis, Mo., and East St. Louis, Ill., distance 471 miles, to the extent it exceeded a rate of 12½c from Vinita, Okla., to the same destinations, distance 360 miles. Okmulgee and Vinita are both on the St. L. & S. F. R. R., the latter also being served by the M. K. & T. R. R. Both are refining points, the manufacturing and selling conditions being similar, and are in active competition. Prior to Sept. 1, 1913, the group rate from Okmulgee and Vinita and all northeastern producing points was 17c, but on that date, in compliance with 27 I. C. C. 445, the rate from Vinita was reduced to 12½c. The rate on refined oils from both points to St. Louis and East St. Louis was 17c, yielding 9.4 mills per ton-mile from Vinita and 7.2 mills from Okmulgee. To points other than St. Louis and East St. Louis the rates on petroleum road oil and petroleum tailings were generally the same. They are the refuse left after refining, and their value is about 15 per cent that of refined oils. From most points from which commodity rates apply lower rates obtain on the residuum than on the refined products. The 12½c rate on residuum from Vinita yielded about 7 mills per ton-mile; and a like rate from Okmulgee would yield about 5.3 mills. HELD, that in view of the material difference in length of haul from the two points there should be some difference in rates, but from Okmulgee it should be reduced to 14½c. American Refining Co. v. St. L. & S. F. Ry. Co., 30 I. C. C. 103.

(k) Complainant complained of the failure of defendant carriers to grade a differential of 5c over the rate to the Missouri River on shipments of fir lumber and fir forest product from Pacific coast points to destinations in Iowa. In 1907 carriers increased the rate from Pacific coast points to St. Paul from 40c to 50c, which rate was, following the decision of the Commission in Oregon & Washington Lumber Manufacturers' Assn. v. U. P. R. R. Co., 14 I. C. C. 1, 19, reduced to 45c. The rate from St. Paul to Chicago was 10c, which applied as a maximum at intermediate points, had the effect of blanketing practically all of Iowa with a 55c rate. The rate to Omaha was 50c, while that to the Mississippi River was

55c. A large portion of the lumber traffic involved originates at stations on the lines of carriers with eastern termini at the twin cities, i. e., the N. P. Ry. and the G. N. Ry. HELD, following Betcher Lumber Co. v. C. M. & St. P. R. R. Co., 26 I. C. C. 335, 336, that the 55c rate to the Mississippi River, made by the Omaha lines, is the result of competition at St. Paul. Complaint dismissed. Wheeler Lumber, Bridge & Supply Co. v. A. T. & S. F. R. R., 30 I. C. C. 343.

(l) A differential of 7c between Dubuque, Ia., and East Dubuque, Ill., to Iowa points found justifiable. East Dubuque Supply Co. v. I. C. C. R. R. Co., Unrep. Op. A403.

(m) It has been the usual custom to apply a differential of 2.5c over St. Louis, Mo., when establishing rates on fifth-class commodities from Kansas to Peoria and Springfield, Ill. National Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A420.

(n) Differentials vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565.

(o) The general rule is that differentials should decrease as distance increases. Lumber Rates to Knoxville, Tenn., 30 I. C. C. 524, 526.

(p) Accepted rule is that the amount of the differential should vary in inverse ratio to the length of haul. Coal Rates from Virginia Mines, 30 I. C. C. 635, 649.

(q) Other circumstances and conditions being the same, a spread of rates between certain points that is materially in excess of the spread between other points is palpably unreasonable and prejudicial. Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 144.

(r) Difference between import and domestic rate on blackstrap should not exceed 3c per 100 pounds. Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 31 I. C. C. 311, 320.

(s) Complainant attacked the combination carload rates on bituminous coal from points on the W. P. T. Ry. in Pennsylvania to destinations in other states reached by the P. & L. E. R. R. and B. & O. R. R., as unreasonable and discriminatory. The W. P. T. Ry. connected with the W. & L. E. R. R. on the west and with the W. S. B. R. R. on the east; its traffic reaching the P. & L. E. R. R. and B. & O. R. R., only over the W. S. B. R. R. Mines on the latter were accorded the Pittsburgh rates, the W. S. B. R. R. receiving the 15c per ton, absorbed by the P. & L. E. R. R. and the B. & O. R. R., while from complainant's mines on the W. P. T. Ry., from 28 to 40 miles more distant from the junctions, a 30c per ton-local was added. Complainants could, however, ship via the W. & L. E. R. R. at the Pittsburgh rates. Rates from Pittsburgh to Youngstown yielding 10.7 mills and 7.8 mills per ton-mile. HELD, that the rates complained of were unreasonable and prejudicial to complainants only to the extent that they exceeded by more than 10c per ton joint rates to the same destinations from mines on the W. S. B. R. R. Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660.

(t) Complainant attacked the transcontinental carload and less-than-carload commodity rates to the Willamette Valley, made by adding to the rates to Portland, Oreg., the local class rates from Portland to destination as unreasonable and discriminatory compared with the rates to points between Portland and Tacoma, Wash. In compliance with the Commission's holding in Gile & Co. v. S. P. Co., 22 I. C. C. 298, carriers had substituted the formerly applied arbitrary of 10 cents over Portland on the first four classes; but had failed to restore the arbitrary on articles in the classes taking commodity rates. The entire benefit of the difference in rates accrued to the lines east of Portland. Transcontinental commodity rates at points between Portland and Tacoma were made by adding to the Portland rates 5c per 100 lbs. for carloads and 10c, l. c. l., but these states were strongly influenced by rates of the G. N. Ry. to near-by points (controlled by actual water competition at tidewater points, and by potential water competition on the Cowlitz river. HELD (1) that defendants' had refuted complainant's charges of undue preference to points between Portland and Tacoma; but (2) that the rates to the Willamette Valley were unreasonable to the extent that they exceeded a differential of 10c over Portland. Gile & Co. v. S. P. Co., 34 I. C. C. 319.

VI. PROCEDURE.

See Procedure Before Commission.

§10. In General.

(a) Where insufficient carriers are named the Commission cannot undertake to settle so broad a question as that of the differential relation of Omaha and Kansas City. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 681, 687.

(b) Comparison of related rates by Commission in determining reasonableness of rates criticized by complainants as "adjusting of differentials." That such a method may be employed in any proceeding before the Commission regarding the reasonableness of a rate can not be validly questioned. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 423.

DISCRIMINATION.

I. CONTROL AND REGULATION.
§1. Construction of the Act.
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II. DETERMINATION OF DISCRIMITION.
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CROSS REFERENCES

See Absorption of Charges, II; Act to Regulate Commerce, II (f), (h), (d); Advanced Rates, §5 (2) (l), (n), (o), (p), §5 (4), (d), (f), §17 (hh), V; Allowances, §8 (2½) (f), III; Any Quantity Rates, I (e), (j), (o); Blanket Rates, §8, (e), (f), §11 (c), (h), §12, V; Branch Lines, §1 (h); Bridge Tolls, II; Cars and Car Supply, §7 (j), (n), (s), II; Classification, V, §5 (r), §7 (n), §16 (e), §17, §22 (1); Commodities Clause, II (h), (j); Common Carrier, §8 (e); Compress Companies and Charges, (b), (e); Credit Account, (a), (b); Crimes, II, §2 (a), (b), §2½ (a), (b); Demurrage, §2 (d), §3, §15 (g), §18½ (b); Differentials, §2½ (d), §7 (a), (c), §8 (s); Equalization of Rates, §2 (e), §2 (c), §3 (b), §3 (l), §3 (n), (s), (v), (dd), §4 (1), (a), (b), §8 (c); Evidence, §14 (1), (dd); Export Rates and Facilities, III, V (e); Express Companies, III; Facilities and Privileges, IV, §15 (ww), 15 (4f), §15 (4n); Long and Short Haul, §2½ (a), §4½ (b), (x), (y), §5 (ss), §7 (b), §12 (1), (b); Loss and Damage, § 8 (f); Passenger Fares and Facilities, §2 (j), III; Proportional Rates, II; Reasonableness of Rates, §28 (sss); Reconsignment, II; Reduced Rates, §3 (a), (c), (d), (e); Reparation, §7½ (a), (h), §16 (e); Special Rates and Services, (a), (h); Switch Tracks and Switching, §2 (d), §3 (k), III; Tap Lines, §7 (i); Terminal Facilities, §1 (c), §2 (b), §3 (b), (c), (k), §6 (a); Through Routes and Joint Rates, §3½ (d), §11 (2), (b), §13 (bb), (dd), (hh), (ii), §15½ (a), (b), Water Carriers, §6 (b), (h), (i), (n), (z), (ee), II; Weights and Weighing, III.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Construction of the Act.

(a) The discrimination defined in section 2 may arise as between shippers of like kinds of traffic under substantially similar circumstances and conditions. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 593.

(bc) Paragraph 1 of section 3 forbids undue and unreasonable discrimination between persons, companies, firms, corporations, localities, or particular descriptions of traffic in any respect whatever. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 480.

(d) It is well settled that a discrimination under section 3 may be established only by showing an advantage to one shipper and a contemporaneous disadvantage to another. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 594.

(e) Section 3, forbidding unjust discrimination applies as well when one of the hauls is intrastate as when both are interstate. Pacific Coast Gypsum Co. v. O.-W. R. R. & N. Co., 30 I. C. C. 135, 139.

(f) With the contention that an issue of discrimination in the sense of preference and prejudice under section 3 of the act can not be considered in a proceeding relating to a rate increased since 1910, the Commission is unable to agree. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 419.

(g) The Interstate Commerce Act does not command strict uniformity of treatment with respect to facilities of shipment, but forbids only undue or unreasonable preferences. Hocking Valley R. Co. v. New York Coal Co., 217 Fed. 727, 733.

(h) Where there is no indication of the manner in which any person or set of persons is favored by reason of a discrimination as between commodities, and where it does not appear that the rates themselves fixed or materially influenced the disposition or sale of the commodities, nor that the transportation charges on one commodity controlled or restricted the market on the other, there is no undue discrimination in violation of the Act. Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C. 162, 168.

(i) Paragraph 1 of section 3 forbids undue and unreasonable discrimination between persons, companies, firms, corporations, localities, or particular descriptions of traffic. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 480.

(j) Discrimination under section 3 may be established only by showing an advantage to one shipper and a contemporaneous disadvantage to another. Douglas & Co. v. I. C. C. R. R. Co., 31 I. C. C. 587, 594.

(jj) Section 2 of the Interstate Commerce Act, prohibiting unjust discrimination by carriers, and section 3, prohibiting undue preferences, relates to passenger as well as to freight transportation. Ligon v. St. L. & S. F. Ry. Co., (Mo. App. 1914) 168 S. W. 647, 649.

(k) The design and effect of the statute is not only to compel interstate carriers to give fair and equal treatment to all shippers, without distinction or favor, but also to provide for such publicity in the matter that all may know certainly that they are receiving the benefits of the law. Zoller Hop. Co. v. So. Pac. Co., 143 Pac., 931, 933.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) To maintain a suit for damages for discrimination in switching facilities on intra-state shipments it is not necessary that the matter be first submitted to the Interstate Commerce Commission. Hocking Valley R. R. Co. v. New York Coal Co., 217 Fed. 727, 735.

(b) The Interstate Commerce Commission, while it possesses quasi judicial powers, is primarily an administrative body. From the legislative and judicial history of the Act it appears that the purpose of the Act under which the body was created "is to promote and facilitate commerce by the adoption of regulations to make charges for transportation, just and reasonable and to forbid undue and unreasonable preferences and discriminations." The promotion and facilitation of commerce being the purpose for which the statute was enacted and the commission created, with power conclusively to determine the existence of prejudice and discrimination, the supreme court has from time to time recognized the administrative character of the Commission as the instrument to effectuate that purpose. The Commission, therefore, being more of an administrative than a judicial tribunal, is not restricted in its procedure by the tech-

nical rules that prevail in tribunals that are entirely judicial. In its capacity of a judicial tribunal, the Commission may decide questions between shippers and carriers upon complaint filed by one or the other, in proceedings regularly instituted by one against the other, or within its broader sphere, it may regulate commerce in respect to a matter in which there may exist no distinct parties in controversy, or as a consequence of which damage may not be claimed or sustained by any party to the investigation. It may institute of its own motion an inquiry as to a matter within its jurisdiction and make and enforce its orders as in a proceeding instituted by an injured party. With such power, and with all the parties before it in a proceding instituted by petition, as the one under consideration, it is not contemplated that the Commission acting within its administrative sphere, should be restricted in its pleadings, as in an action at law, but may extend its inquiry and affix its name to the matters in inquiry, and which are involved in the complaint and included in the consideration of the principal point in controversy, provided always that the parties are not taken by surprise, and to them is afforded an opportunity to present evidence upon which the commission may make a finding concerning both the original and the related matter. P. & H. Ry. Co. v. U. S., 219 Fed., 989, 992-3.

(c) The question whether the Interstate Commerce Commission has power to find discrimination against one locality in a proceeding instituted upon complaint, charging discrimination against another locality, depends, first, upon the related circumstances of the case, and, second, upon the purpose for which the Commission was created and the mischief which it was intended to remedy. Philadelphia & R. Ry. Co. v. U. S., 219 Fed. 989, 991.

(d) When discrimination respecting traffic between the two points is the only question in issue, the carrier can not complain that it was not afforded an opportunity to defend the tariff imposed, nor to defend against a possible finding of discrimination against the locality of the shipper at the other end. The whole question of discrimination related to the whole transaction of commerce and its movement in trade from the maker to the consumer. The route was the same. The rate was the same and, if discriminatory, the injury existed as well to one locality as to the other, in that it impeded commerce and prevented a purchaser buying as well as a vendor selling. In this case, the finding of the commission that the rate prejudiced Jersey City was based upon evidence to meet which an opportunity by a rehearing was afforded the defendant, and the fact that much of the evidence upon which the finding was based was the same that was introduced for the purpose of proving prejudice, to the locality of the seller is unimportant, inasmuch as it was likewise sufficient to find prejudice against the locality of the purchaser. The thing that was made the subject of the order was involved in the complaint and established by evidence. Is there any question that the commission, with the parties before it, could have made the finding of discrimination against Jersey City, if the inquiry had been based upon the complaint of Jersey City, or upon a like proceeding instituted of its own motion? If not, then with the parties before it, and with the discriminatory effect of the rate against the locality of Jersey City, being necessarily linked with and related to any question of discrimination against the locality of Evansville, and being openly made a part of the controversy, there is no reason why, in that proceeding, the commission could not make the same finding and order as it could have made if the proceeding had been otherwise instituted. Traffic with the locality of Jersey City is so related to traffic with the locality of Evansville, the two localities being the termini of the journey for which the rate in controversy was fixed, that in the proceeding, as instituted and conducted, the commission possessed the power to find discrimination against either one locality or the other. P. & R. Ry. Co. v. United States, 219 Fed., 989, 993, 994.

(e) Section 3, forbidding unjust discrimination, applies as well when one of the hauls is intrastate as when both are interstate. Pacific Coast Gypsum Co. v. O.-W. R. R. & N. Co., 30 I. C. C. 135, 139.

(f) The allegation that rates paid by complainants' competitors are "unreasonably low" and "should be corrected by an increase," does not present an issue within the scope of the act or upon which the Commission could make an

order, unless the relation of rates attacked results in such discrimination or preference as the act condemns. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 334.

(g) While carriers may determine and direct their respective business policies, even these are comprehended within the Act when they result in unjust discrimination. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 340.

(h) The Commission's jurisdiction to require carriers to remove a discrimination against interstate commerce effected by the maintenance of intrastate rates established in compliance with requirements of the state authorities is definitely affirmed. Merchants Exch. of St. Louis v. B. & O. R. R., 34 I. C. C. 341, 357.

II. DETERMINATION OF DISCRIMINATION.

§3. In General.

(a) Section 2 embodies the phrase, "under substantially similar circumstances and conditions," but this might be included in words "in any respect whatsoever," contained in section 3. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 167, 168.

(bc) Discrimination in favor of Chattanooga from interior eastern points justified in order to avoid violations of section 4. Atlanta Journal Co. v. S. A. L. Ry., 28 I. C. C. 186, 190.

(d) Not necessarily a discrimination to disregard rule that rate per ton-mile shall decrease as distance increases. Boston Chamber of Commerce v. A. T. S. F. Ry. Co., 28 I. C. C. 230, 232.

(e) Rates constructed to equalize former refund on coal for steam purposes not found unjustly discriminatory. Lebanon Commercial Club v. L. & N. R. R. Co., 28 I. C. C. 301, 304.

(f) Refusal to return property free exhibited at National Dairy Show Asso. in Chicago while returning free property exhibited at state fairs and expositions at Syracuse and Trenton not found unduly discriminatory. Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406, 408.

(g) Inbound rates to competitive jobbing centers should be adjusted independent of the outbound rates in such manner as to avoid unjust discrimination. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 576.

(gg) When it is shown that industries have been established at favored points solely by reason of rates accorded them, the inference is inevitable that the denial of such rates to the other points has resulted in their being avoided by investors in the location of industrial enterprises, and a situation of discrimination is disclosed. Santa Rosa Traffic Assn. v. S. P. Co., 29 I. C. C. 65, 66.

(h) Undue discrimination cannot be said to lie merely in the maintenance of different rates on articles of different grades or values, nor in withholding from a given point not similarly affected by transportation conditions rates which are accorded to other points. Scully Syrup Co. v. P. R. R. Co. Unrep. Op. A-360.

(i) To agree with a particular shipper to expedite a shipment at regular rates, even where no rate has been established for special expediting, is a discrimination, and as such a violation of the Elkins Act of February 19, 1903. Johnson v. N. Y. N. H. & H. Ry. Co. (Me., 1913), 88 Atl. 988, 991.

(j) Though it be conceded that discrimination exists against a city in favor of another city or cities, it does not necessarily follow that the discrimination is due to unlawfulness in the rates to the first city. Chamber of Com., Washington, D. C., v. B. & O. R. R. Co., 30 I. C. C. 446, 452.

(k) Section 3 of the Act applies as well in a proceeding when one of the hauls is intrastate as when both are interstate. Pacific Coast Gypsum Co. v. O.-W. R. & N. Co., 30 I. C. C. 135, 139.

(l) A competitive relation must generally exist between commodities before there can be an undue prejudice between them. Chicago Board of Trade v. A. T. & S. F. Ry. Co., 29 I. C. C. 438, 443.

(m) Lack of strict uniformity of treatment does not necessarily result in undue prejudice. Adams & Sons Co. v. V. S. & P. Ry. Co., 29 I. C. C. 52, 60.

(n) The sanction of the Commission cannot be given to rates that lend themselves to the preference of one individual or locality over another. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 577.

(o) The mere establishment of a competing wholesale house does not make unduly discriminatory rates which were not found to be so at a former hearing. Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265, 269.

(p) A just equality o- opportunity for shipper and locality is required by the law. That discrimination has long existed without correction does not justify the discrimination, but furnishes a reason why the law inhibiting the same was enacted. Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 171.

(q) Under section 2, prohibiting unjust discriminations, and section 3, prohibiting undue preferences, a passenger has no right to be transported over a longer route between two points at the tariff rate applicable to a shorter route. If he travels by the longer route, he must pay the fare applicable thereto and at the time chargeable to all persons traveling by that route, and if he refuse to do so, it is not only the right but the duty of the conductor to refuse to carry him. Ligon v. St. L. & S. F. Ry. Co., (Mo. App. 1914) 168 S. W. 647, 649.

(r) Complainants assailed the rates of from 12½c to 15½c charged for transportation of flour and grain products in carloads from milling points on the Shenandoah division of the N. & W. Ry., in Virginia and West Virginia, to points on the Pocahontas division and Clinch Valley extension in the same states. The destination territory is known as the "Norfolk & Western coal fields," bounded on the east by Bluefield, W. Va., on the west by Norton, Va., on the northwest by Williamson, Va. Complainants' chief competitors were Washington Court House, Columbus, Cincinnati, and Ironton, Ohio. The rate from the former point to Bluefield was 15c, while the rate from Cincinnati and Columbus to Bluefield was 13c, but rates to a number of other important destination points, such as Pocahontas, Tazewell, St. Paul, Coeburn and Norton, ranged from 15c to 19½c. From Charlestown, W. Va., and Buena Vista, Va., and from Cincinnati and Washington, Ohio, competitive western points, the rates and distances were:

Rates on Flour and Grain Products, Carloads, in Cents per 100 Pounds.

	Miles	Rate
To Tazewell, Va., from—		
Charlestown, W. Va.	338	14½
Buena Vista, Va.	181	12½
Cincinnati, Ohio	353	19½
Washington, Ohio	324	19
To St. Paul, Va., from—		
Charlestown, W. Va.	396	15½
Buena Vista, Va.	239	13½
Cincinnati, Ohio	379	19½
Washington, Ohio	350	19
To Coeburn, Va., from—		
Charlestown, W. Va.	408	15½
Buena Vista, Va.	251	13½
Cincinnati, Ohio	391	19½
Washington, Ohio	362	19
To Norton, Va., from—		
Charlestown, W. Va.	420	15½
Buena Vista, Va.	263	13½
Cincinnati, Ohio	403	15
Washington, Ohio	374	19
To Pocahontas, Va., from—		
Charlestown, W. Va.	328	14½
Buena Vista, Va.	171	12½
Cincinnati, Ohio	341	17
Washington, Ohio	312	19
To Bluefield, W. Va., from—		
Charlestown, W. Va.	316	14½
Buena Vista, Va.	159	12½
Cincinnati, Ohio	351	13
Washington, Ohio	322	15
To Maybeury, W. Va., from—		
Charlestown, W. Va.	333	14½
Buena Vista, Va.	176	12½
Cincinnati, Ohio	334	13
Washington, Ohio	305	15
	Miles	Rate
To Welch, W. Va., from—		
Charlestown, W. Va.	352	15
Buena Vista, Va.	195	13
Cincinnati, Ohio	315	13
Washington, Ohio	286	15
To Williamson, W. Va., from—		
Charlestown, W. Va.	423	15½
Buena Vista, Va.	266	13½
Cincinnati, Ohio	244	13
Washington, Ohio	215	15

The short line from Cincinnati to Norton is via the L. & N. R. R., 304 miles. For all stations, Columbus and Cincinnati to Ashland, inclusive, from which the 13c rate applies to Bluefield, the average distance is 217 miles; while from Virginia mills the rate is also 13c, for distances of from 190 to 230 miles. From Staunton, Va., to main-line stations in this general territory the rate via the C. & O. Ry. is 12c for distances of 146 to 220 miles, and on branch lines, 14c. Rates via the B. & O. R. R. from the valley of Virginia to eastern cities are 12c to 18c for distances of from 130 to 432 miles, though traffic

to the eastern cities is strongly competitive. Traffic on the Shenendoah division of the N. & W. R. R. is much lighter than on the main line, Columbus to Norfolk. The shortest distance from any of the Virginia mills to any of the named destinations is Buena Vista to Bluefield, 159 miles, while that from any Ohio mill is from Ironton to Williamson, 110 miles; the greatest distances are from Charlestown to Williamson, 423 miles and from Cincinnati to Norton, 403 miles. While shipments from the Ohio points have steadily increased of late years and those from Virginia points have decreased, it appears the natural outlet of the latter is in Carolina territory to which Virginia millers ship in increasingly heavy quantities. HELD, that whether or not these conditions are responsible for the diminishing tonnage to the coal fields, it is certain that complainants possess no exclusive rights in the coveted territory. The Commission is not convinced that the rates complained of are unjustly discriminatory. Complaint dismissed. Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605.

(s) To refuse to eliminate a special privilege of many years' standing would be to perpetuate unjust discrimination. Merchants' & Mfrs.' Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 394.

(t) Discrimination predicated upon the maintenance of a different basis of rates by one road or set of roads serving two competing points falls within section 3. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 422.

(u) If carriers find it necessary for competitive or other reasons to make comparatively low rates from certain points to certain destinations, they do so under the obligation imposed by law that the rates shall not be unduly preferential to one shipper, to the prejudice and disadvantage of another shipper who is entitled to equal rates. Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

(v) Evidence falls short of showing that the rate is unreasonable, but rates must not only be reasonable, they must also be free from unwarranted discriminations. Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

(w) The determination whether in particular instances there has been an undue or unreasonable prejudice or preference is a question of fact. Interstate Commission v. Alabama Ry., 168, U. S. 144, 170, 18 Sup. Ct. 45, 42 L. Ed. 414. It necessarily follows that the court in determining whether the conclusions of the Commission as to the discriminatory and preferential practices is supported by the evidential facts set forth in the report, is to be governed by the same considerations as those hereinabove set forth in reference to its conclusion as to the reasonableness or unreasonableness of rates. And, as in the case of rates prescribed by the Commission, the court cannot interfere with practices established by it, "unless it is made plainly to appear that those ordered are void." L. & N. R. Co. v. United States, 216 Fed. 673, 682, 683.

(x) Where railroads served Cairo and Metropolis, Ill., through Memphis as an intermediate gateway and through such gateway the distance on their lines to Metropolis is substantially the same as to Cairo, to which they maintain lower rates than to Metropolis, there was no legal basis on which such railroads could maintain that the discrimination practiced by them was not undue. St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed. 80, 83.

(y) Discrimination is forbidden only when it is unjust. Not every inequality in rates constitutes a violation of the law. Preferences and prejudices are not prohibited unless they are undue. Eagle Distillery v. L. H. & St. L. R. R. Co., 32 I. C. C. 195, 198.

(z) Where undue discrimination against one point or community and in favor of another is alleged, and it is shown that the carrier is not engaged in the transportation to or from the point or community said to be favored and has no voice in the making of the rates to or from such point, the charge of discrimination is not sustained. N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 216.

(aa) Where a carrier establishes a certain rate for the transportation of coal and at the same time establishes and charges a higher rate for the transportation of the same commodity, because it is loaded and transported in a gondola car of the hopper bottom type the sides of which exceed 52 inches in height, it is held that this constitutes an unreasonable and unlawful regulation and restriction upon such traffic and the shippers thereof. C. G. Blake Co. v. M. St. P. & S. S. M. Ry., 32 I. C. C. 270, 271

(bb) Higher fares on interstate than on intrastate travel may not be unlawful discrimination. Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 542, 543.

(cc) Carriers may not by means of their intrastate rates discriminate against traffic moving interstate. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 570.

(dd) Where no evidence is adduced to show that contested rates are unreasonable, relief if granted at all must be upon the ground of unlawful discrimination. Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660, 661.

(ee) Complainants attacked the rates on lumber in carloads from the Pacific Coast and the territory east of the Cascade mountains, known as the "inland empire" to their manufacturing plants in Wisconsin, Iowa; and Illinois, as unreasonable, and also attacked the rates on sash and doors from their manufacturing plants in central freight assn. and trunk line territories as unreasonable and discriminatory compared with rates thereon from the Pacific Coast to the same destinations. Taking representative points of destination, the total rates in cents per 100 lbs., were as follows:

From	To Chicago		To Columbus		To New York City	
	Lumber	Sash and Doors	Lumber	Sash and Doors	Lumber	Sash and Doors
California	60.0	60.0	67.6	73.9	75.0	75.0
North Coast	55.0	55.0	65.5	70.8	75.0	80.0
Clinton, Iowa	8.4	8.4	15.8	19.4	30.8	36.5
Oshkosh, Wis.	8.5	9.5	18.1	20.1	29.5	38.5

Thus, complainants at Clinton, Iowa, and Oshkosh, Wis., paid 91 and 97c, respectively to bring 100 lbs. of lumber from California and deliver the same weight of sash and doors in New York City, while California manufacturers paid only 75c to ship 100 lbs. of sash and doors to New York, N. Y. It required 150 lbs. of lumber to make 100 lbs. of sash and doors. Lumber rates from the north coast were blanketed from Clinton to Chicago. But where "cut stock" was shipped, the shipper avoided paying freight on 2-5 of the waste. Complainants paid rates on their products higher than those on lumber; while to certain points California manufacturers paid rates on the products the same as on lumber, the carload minimum being on all commodities 30,000 lbs., except unglazed set-up sash, minimum 24,000 lbs. From north coast points sash and doors were placed on the lumber basis to Chicago and points west thereof, with the provision, however, that minimum carload weights must apply whether the cars were loaded to visible capacity or not, resulting in charged weights exceeding the actual weights by 14.8 per cent. HELD, that that part of the complaint which alleged unreasonable rates had not been sustained; but that the allegation of unjust discrimination in so far as such discrimination arose from unequal treatment of lumber and lumber products in the various competing territories involved, had been established. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332.

(ff) In the absence of uniform circumstances and conditions uniform rates and practices may be discriminatory. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 53.

(gg) A carrier may unjustly discriminate against a point by participation in joint rates thereto or therefrom, although its line does not reach that point. By participating in joint rates each carrier in a measure becomes responsible for the actions of the other participating carriers, and the joint transportation via the different lines is an arrangement under which each of the carriers participating therein, is, in fact, serving any point to or from which the joint rate applies. If a carrier by participation in joint rates serves a point beyond its line, it certainly may compete with another carrier operating to that point. S. P. Co. Ownership of Oil Steamers, 34 I. C. C., 77, 80.

§4. Similar Conditions.

See Absorption of Charges, §5 (b); Blanket Rates, §8 (h).

(a) Combination of inbound and outbound rates favoring the lower crossings as against the Iowa crossings not justified by differences in mileage, general conditions affecting transportation to and from and through them, the

geographic location and the commercial activities of the upper and lower crossings. Mississippi River Case, 28 I. C. C. 47, 54.

(b) Complainant attacked the rate of 13c per 100 lbs. imposed on shipments of hewn oak ties from Catron, Mo., to Thebes, Ill., a distance of 71 miles, as unreasonable, compared with a rate of 8c on oak lumber. In May, 1910, complainant shipped three carloads of ties from Catron to Chicago, routing them via the St. L. S. W. Ry. to Thebes, and thence via the C. & E. I. Ry. to Chicago, but the St. L. & S. W. R. R., having no published rate on hewn oak ties to Thebes, hauled the ties 7 miles to Parma and delivered them to the St. L. & S. F. R. R., by which line they moved to Thebes, and thence via the C. & E. I. R. R. to Chicago. The distance from Catron to Thebes via the St. Louis S. W. Ry. is 83 miles. The total number of ties shipped was 1,027, and the aggregate weight 179,300 lbs. The total charges were $366.51, made by charging 5c per 100 lbs. from Catron to Parma, 8c from Parma to Thebes and 13c per tie from Thebes to Chicago. The charges from Catron to Thebes were made without tariff authority. Shortly prior to the shipment in question a rate of 8c on shipments of oak lumber and hewn oak ties between Catron and Thebes via the St. L. S. W. Ry. had been canceled as to ties. Subsequently the 8c rate on ties was reestablished. HELD, that the rate charged for the movement from Catron to Thebes was unreasonable to the extent that it exceeded the rates of 8c per 100 lbs. via the route selected by the shipper, before and after the shipments moved. Reparation awarded. Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701.

(c) The Commission will not permit the continuance of an inequitable condition, when the only barrier to the establishment of equality is the possible impairment of some supposedly vested interest, which has become vested, if at all, primarily by reason of the discrimination condemned. Santa Rosa Traffic Assn. v. S. P. Co., 29 I. C. C. 65, 66.

(d) San Jose, Santa Clara and Marysville, Cal., were accorded terminal rates on westbound transcontinental traffic, which privilege was denied to Santa Rosa. Santa Rosa prayed an extension of the rates to it. On hearing, the Commission concluded that if the former points were entitled to such rates, Santa Rosa was even more than entitled thereto; but, expressly declining to approve an extension of terminal rates, merely directed defendants to abstain from imposing higher rates on Santa Rosa. (24 I. C. C. 46.) On rehearing Fresno, Cal., intervened, asking to be accorded such relief as might be granted to Santa Rosa. Marysville was located on the Feather River, a stream of doubtful navigability, while San Jose, Santa Clara and Santa Rosa were all inland points, situated at no great distance from tide-water ports, apparently accessible only to light-draft vessels. The latter was connected with its port by an electric line, the two former by wagon transportation facilities only. The claims of Fresno were predicated, not upon accessibility to navigation, but on the fact that much of the transcontinental traffic carried under the terminal rates passed through that place en route to the terminal points. San Jose and Santa Clara owed their development to the rates they had enjoyed to the detriment of other localities, since the absence of such rates at the latter points resulted in their being avoided by investors in the location of industrial enterprises. HELD, that the situation of Santa Rosa with respect to transportation facilities was not sufficiently dissimilar from that of Marysville, San Jose and Santa Clara to justify denial to it of terminal rates in question, but that no affirmative order could be made as to Fresno, it having failed to show a substantial similarity with respect to water competition between it and Santa Rosa. Ordered that so long as terminal rates are applied to San Jose, Santa Clara and Marysville, no higher rates should be applied to Santa Rosa. Santa Rosa Traffic Assn. v. S. P. Co., 29 I. C. C. 65.

(e) Complainants protested against the carload rates on iron and steel articles from Pittsburgh, Pa., Chicago, Ill., and Birmingham, Ala., and points taking the same rates to Oklahoma City, Okla., as unreasonable and discriminatory, compared with rates to Muskogee, Sapulpa, Tulsa and various points in eastern Oklahoma. The price of iron and steel articles is formed by adding to the Pittsburgh base price the freight

from that point, no matter from what point shipment is made. Oklahoma City, situated in the center of the state, is distant by the shortest direct single line 543 miles from the nearest Mississippi River gateway (St. Louis, Mo.) or 576 miles average by all lines serving it, compared to distances of 367, 425, 439 and 457 miles in the case of its leading competitors in eastern Oklahoma, and was also served by a greater number of direct single lines than either of them. Prior to 1906 Oklahoma City and her competitors enjoyed identical rates, but from that year the rate from Pittsburgh to Oklahoma City on bolts and nuts was 74c, while to her competitors the rates ranged from 51c to 59½c. On roofing and sheeting via Memphis the difference between the combination rate and the through rate was 11c in case of her competitors as against a difference of only 6c on shipments to Oklahoma City. The change in rates was in no respect due to Arkansas River water competition. HELD, that the rates complained of were discriminatory and unjustly preferential, and readjustment directed. Oklahoma Traffic Assn. v. A. T. & S. F. Ry Co., 29 I. C. C. 129.

(f) Complainants attacked the adjustment of rates between Terre Haute and the Missouri River and points west as unreasonable and discriminatory, because unduly preferential to Chicago and Chicago rate points, including Milwaukee, Manitowoc and Sheboygan, Wis., Danville, Ill., and Gary and Hammond, Ind. Terre Haute is 8 miles east of the Indiana-Illinois state line, 178 miles south of Chicago and 169 miles northeast of St. Louis, on the lines of the Vandalia; the C. C. C. & St. L., the C. & E. I. and St. L. and Vandalia railroads reach St. Louis direct from Terre Haute, while the C. & E. I. R. R. reaches St. Louis via a circuitous route through Danville, where its St. Louis branch connects with the main line Chicago to Terre Haute and Evansville. The C. T. H. & S. E. R. R. also extends from Chicago to Terre Haute, thence east to Westport, Ind., participating in Terre Haute to St. Louis traffic in connection with the T. St. L. & W. R. R. from Humrick, a junction point north of Terre Haute. Only the C. & E. I. and the Vandalia railroads publish joint through class rates from Terre Haute to the Missouri River, which are, for the ten numbered and lettered classes, 86c, 66c, 51c, 38c, 32c, 34½c, 28½c, 25c, 21c and 18c, respectively. The C. C. C. & St. L. and the C. T. H. & S. E. R. R. Cos. constructed through class rates by adding to their local rates to St. Louis of 32½c, 27½c, 22c, 14½c, 11½c and 9c, the proportionals applicable between the rivers on traffic originating east of the Illinois-Indiana state line, viz.: 55c, 41c, 32c, 24c, 20c, 22c, 18c, 15c, 12c and 10c. Local rates to St. Louis were published as proportional rates to all Mississippi River crossings as far north as East Dubuque, Ill. From Chicago joint through rates to the Missouri River were constructed by adding to the full local rates between the rivers of 60c, 45c, 35c, 27c, 22c, 24½c, 19½c, 17c, 10c and 11c, the differentials 20c, 20c, 10c, 5c, 5c, 7½c, 5c, 5c, 5c and 5c. Thus the joint through rates to the Missouri River published by the Vandalia and the C. & E. I. Rys. were higher than the rates from Chicago by 6c, 1c, 6c, 6c, 5c, 2½c, 4½c, 3c, 6c and 2c. The rates of the Vandalia and the C. & E. I. railroads were exceptions to the general basis of rates applicable from Central Freight Association territory, the rate having been reduced from the 60c scale by the decision in 21 I. C. C. 546. The 86c scale from Terre Haute to the Missouri River via the C. & E. I. and the Vandalia railroads was established in 1909 and 1910, to meet the rates of the L. & N. R. R., but did not, when the establishment of the 55c scale between the rivers automatically reduced the rate from Evansville to St. Louis to 81c establish the latter scale from Terre Haute, but changed the routing so as to eliminate Terre Haute as an intermediate point. The establishment of the 55c scale thus affected only such rates from Terre Haute as were made on the combination basis, namely, those via the C. C. C. & St. L. and the C. T. H. & S. E. R. R. Cos., which were thereby reduced from 92½c to 87½c, first class. The 55c scale applies only on traffic originating east of the Indiana-Illinois state line. From Illinois points not intermediate to Chicago the basis in effect to the Missouri River is the combination of locals to and from the Mississippi River, the former being the Illinois intrastate scale to East St. Louis, subject to the basis in effect from more distant points in Indiana as maxima. From Illinois points

intermediate to Chicago the Chicago basis is carried not only by the direct but also by the indirect routes, some of which practically parallel the Indiana-Illinois state line for a part of their distance, but none of which have substantial mileage in Central Freight Association territory. Danville, 55 miles north of Terre Haute, is accorded the Chicago basis by both the C. & E. I. and the C. I. & S. R. R. Cos., being intermediate via both lines. Humrick, Ill., 36 miles north of Terre Haute, was also accorded the Chicago rates by the C. T. H. & S. E. R. R., in connection with the T. St. L. & W. R. R., being intermediate to Chicago. In the interests of simplicity in tariff publication Chicago rates were also extended to Hedrick, Ind., a point on a branch from one of these lines paralleling the Indiana-Illinois state line, no Missouri River traffic originating there. The Chicago basis had also been extended to Gary, though situated in Indiana, being served by switching lines to junction points of western carriers outside of Chicago. The only substantial traffic from Gary was in iron and steel articles, which moved on a fifth-class rate substantially identical with that applying at Terre Haute. While the Chicago rates were applied from the Wisconsin points by certain lines to Missouri River points, none of them had a direct route to St. Louis. The short line distance from Chicago to the Mississippi River was 135 miles; to the Missouri, 438 miles. The short line from Terre Haute to the Mississippi was 159 miles, to the Missouri 446 miles. The average distance to the Missouri was 458 miles from Chicago, and 523 miles from Terre Haute. The proportion of through car traffic was much greater in the case of Chicago than Terre Haute. HELD, the adjustment to and from Terre Haute was not unreasonable, and that the application of Chicago rates to the points in question did not constitute unfair discrimination. Complaint dismissed. Commercial Club of Terre Haute v. V. R. R. Co., 29 I. C. C. 383.

(g) Lower rate in effect on distillers' dried grain from Louisville, Ky., to Baltimore, Md., for export than from Eminence, Ky., to Baltimore, Md., via Cincinnati, the distance being 14 miles shorter. HELD, not unjustly discriminatory and complaint dismissed. Dewey Bros. Co. v. L. & N. R. R. Co., Unrep. Op. A-102.

(h) Rates on tobacco from Paris, Tenn., to New Orleans, La., found to be unjustly discriminatory in so far as it exceeds the rate contemporaneously in effect from Murray, Ky., to New Orleans, La. Douthitt & Crosswy Tobacco Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-118.

(i) Allegation of discrimination against Thermopolis, Kirby and Cody, Wyo., in favor of Salt Lake City, Spokane and Montana points in rates on beer from St. Louis, Mo., and Milwaukee, Wis., not sustained. Skinner v. C. B. & Q. R. R. Co., Unrep. Op. A-128.

(j) Rate for the transportation of imported flaxseed from New York, N. Y., to Toledo, O., found to be unjustly discriminatory as compared with the rate from New York, N. Y., to Buffalo, N. Y. Reparation denied. Major Co. v. D. L. & W. R. R. Co., Unrep. Op. A-165

(k) Rates on hay from DeWitt, Ark., to New Albany, Ind., via Thebes, Ill., not found to be unreasonable nor unduly prejudicial as compared with rates to Louisville, Ky. Slider v. S. Ry. Co., Unrep. Op. A-425.

(l) Rates on lard substitute from El Paso, Tex., to points in New Mexico found to be unreasonable and unduly prejudicial as compared with rates from Fort Worth, Tex., to same destinations. Reduction ordered and reparation awarded. El Paso Refining Co., Inc., v. R. G. & E. P. R. R. Co., Unrep. Op. A-248.

(m) It is not an unreasonable or unlawful discrimination for a carrier to expedite a switching service for a class of goods which, like strawberries, are perishable in their nature, provided the service is extended to all shippers of that class of goods. Johnson v. N. Y. N. H. & H. Ry. Co. (Me. 1913), 88 Atl. 988, 991.

(n) Complainant attacked the rates on staves and heading from Columbus, Miss., to southeastern points as unreasonable and discriminatory, compared with rates from Meridian and Jackson, Miss., to the same destinations. Rates from Columbus to destinations in the southeast were generally the same as those from Greenville, but not less than those from Meridian. Adjustments from

Greenville and Corinth, Miss., and Memphis, Tenn., and Jackson were generally the same. Meridian was not grouped with these points, but bore generally the Mobile rates to the southeast. Defendants, while not admitting the unreasonableness of the rates complained of, revised the rates from Columbus, effective May 1, 1914, making reductions to a majority of the points involved of from 2 to 7½c per 100 lbs., placing Columbus on substantially the same basis as Meridian. Existing rates from Columbus to Mobile, Ala., New Orleans, La., Pensacola, Fla., Chattanooga, Tenn., and Bristol, Va., were 13, 14, 19, 12 and 17c for distances of 233, 300, 330, 266 and 508 miles, respectively. Defendants were willing to establish a through rate of 14c to Pensacola, but proposed no reduction to Mobile, New Orleans, Chattanooga or Bristol. The rate from Meridian to Bristol was slightly lower than the rate from Columbus, but there was a one-line haul from Meridian to Chattanooga over the A. G. S. R. R. The rate from Columbus to Atlanta, Ga., via the Southern Railway was 18c; via the M. & O. R. R., 11c. The readjustment would work an increase of 1c in the latter case, but a reduction of 6c by the former. The existing rate from Columbus to Savannah, Brunswick and Jacksonville was 27c; from Meridian via the M. & O. R. R., 17c. Defendants proposed to reduce the rates from Columbus to 19c and raise the rates from Meridian to the same amount. HELD, that the adjustment of rates to become effective May 1, 1914, was not unreasonable or unjustly discriminatory. Reparation denied and complaint dismissed. Moore Stave Co. v. Southern Ry. Co., 30 I. C. C. 105.

(o) Refusal to transport for complainant railroad company interstate shipments from and to industries on defendant's lines at New Castle, Pa., while transporting similar traffic for other carriers there, held to be undue discrimination in violation of section 3. B. R. & P. Ry. Co. v. P. Co., 29 I. C. C. 114, 118.

(p) Maintenance of main-line or district rates on bituminous coal from points on one short line while denying such rates to points located on another short line, held to constitute undue prejudice. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C., 682, 689.

(q) A comparison of rates from one city to a second with those from a third city to the latter does not necessarily denote undue prejudice if the withdrawal of the carrier's concurrence in the rates from such third city would not affect the movement, rates, or practices respecting elevation. Elevation Allowances at St. Louis and E. St. Louis, 30 I. C. C. 696, 699.

(r) Complainants attacked the rates of 46c and 45c on carload shipments of news print paper from Minnesota and Wisconsin mills, respectively, to Muskogee, Okla., as unreasonable and discriminatory against Muskogee in favor of Kansas City, Mo., Joplin, Mo., and other western trunk line points. Rates to Kansas City from International Falls, Minn., were 21c and yielding 5.23 mills for 803 miles; to Joplin, Mo., 32c, yielding 6.681 mills per ton-mile for 958 miles, and to Muskogee 46c, yielding 8.712 mills per ton-mile for 1,065 miles. Out of the latter rate carriers north of Kansas City received 16.3c, and carriers south 29.7c for their haul of 254 miles. Muskogee rates were blanketed to many Oklahoma points, including Oklahoma City, 110 miles more distant. Outbound less-than-carload rates to Eastern Oklahoma points were the same from Joplin as from Muskogee, but the inbound carload rates made the combination on Muskogee higher than that on either of her competitors. On the haul of a carload of paper, 40,000 lbs., from International Falls to Joplin, 958 miles, the carriers received $128, as compared with $56 for the additional haul of 100 miles to Muskogee. HELD, that the rate to Muskogee should not exceed 35c per 100 lbs. Reparation awarded. Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 289.

(s) On rehearing in Allentown Portland Cement Co. v. P. & R. Ry. Co., it appeared that the rates on cement in carloads from Evansville, Pa., to Jersey City, N. J., was $1.35; from the Lehigh district in the vicinity, 80c. The carriers participating in these rates transported cement from Evansville to Baltimore, Philadelphia, New York and New England points, however, at rates identical with those charged from the Lehigh district. HELD, that Jersey City and its traffic is subjected to undue prejudice. Original finding affirmed. Allentown Portland Cement Co. v. P. & R. Ry. Co., 31 I. C. C. 277.

(t) Complainants attacked the rates on whisky and distillers' dried grain, from

Midway, Ky., to various destinations, and the inbound rates on bottles, boxes and bottle-carrying boxes from certain points to Midway, as unreasonable and discriminatory as compared with rates to and from Lexington and Louisville, Ky. Midway lies on the L. & N. R. R. between Louisville and Lexington, and on the S. Ry. between Versailles and Georgetown. From Cincinnati to Midway, Louisville and Lexington, is 80, 110 and 82 miles, respectively. **Rates on Whisky and Distillers' Dried Grain.**—Rates on distillers' dried grain to Detroit, Mich., Cleveland, Ohio, Buffalo, N. Y., and Philadelphia, Pa., were from Midway, 18c, 18c, 16c and 20.5c, from Lexington 16c, 16c, 11c and 15.5c, and from Louisville 14.5c, 14.5c, 11c and 15.5 c. The S. Ry. did not participate in these rates. The rates on whisky, in wood and in glass boxed, to typical points north and east, were as follows:

To—	From Midway.		From Lexington.		From Louisville.	
	In glass, boxed.	In wood, bulk.	In glass, boxed.	In wood, bulk.	In glass, boxed.	In wood, bulk.
Boston	48	42.6	39	39	39	39
New York	44	38.8	35	35	35	35
Philadelphia	42	36.1	33	33	33	33
Baltimore	41	34.7	32	32	32	32
Richmond	36.5	34.5	27.5	27.5	27.5	27.5
Buffalo	30	24.7	21	21	21	21
Detroit	41.5	26.5	41.5	26.5	20	20
Cleveland	41	26	41	26	20	20
Wheeling	30	23.5	21	21	21	21

Rates from Midway and Lexington to Columbus, Cleveland and Detroit were combinations on Cincinnati, while Louisville enjoyed a much lower through rate, though its short line was via Cincinnati. The whisky rates from Louisville and Lexington to Virginia cities were the same, while rates from Midway were much higher, though it was intermediate to Louisville. Like conditions prevailed as to traffic to New England, trunk line and Atlantic seaboard territories. Rates from Lexington were in general on the Louisville basis. The rates on whisky, L. C. L., in wood, from Midway to New York, Boston and Buffalo were practically the same as from Louisville and Lexington, while to Philadelphia and Baltimore they were slightly lower. Defendants established the lower rates from Louisville and Lexington to meet the competition of northern trunk lines, but their lines were the most direct routes to Virginia cities, and only a little longer than the short lines north of the Ohio to North Atlantic ports. HELD, (1) that rates of the S. Ry. and C. N. O. & T. P. and connections on whisky and distillers' grain from Midway via Cincinnati to Central Freight Association points were not unreasonable nor discriminatory; (2) that rates of the S. Ry. and C. N. O. & T. P. Ry. and connections on such products in carloads from Midway via Cincinnati to points in trunk line, New England or the Atlantic seaboard and on whisky to Virginia cities were discriminatory in so far as they exceeded rates from Lexington via Cincinnati, by more than: Distillers' grain, 2c; whisky in wood in bulk, 3c; whisky in glass, 4c; (3) that rates of the L. & N. R. R. and connections on whisky and dried grain from Midway to Central Freight Association, New England, trunk line, or Atlantic seaboard territories, moving through Cincinnati via Lexington, were discriminatory in so far as they exceeded rates from Louisville via Lexington; (4) that rates on such products from Midway to New England, trunk line and Atlantic seaboard territories moving through Lexington were discriminatory in so far as they exceeded the rates from Louisville via Lexington; (5) that rates on whisky from Midway to Virginia cities were discriminatory in so far as they exceeded the rates from Louisville; (6) that authority to charge lower rates from Louisville and Lexington to Central Freight Association, New England, trunk line and Atlantic seaboard territories, or to Virginia cities, on whisky moving via the L. & N. R. R. from Louisville through Lexington, or from Lexington via Louisville, than from Midway and other intermediate points, be denied. **Rates on Bottles and Containers.**—Complainant charged that the rates on bottles, boxed, bottle-carrying boxes, and wooden boxes, N. O. S., from Central Freight Association points and from Pittsburgh, Pa., and Wheeling, W. Va., to Midway were unreasonable and discriminatory as compared with rates to Louisville and Lexington. The carload rates were: (See Table, Page 264)

The principal routes from the northern cities lie through Louisville and Cincinnati, and to Midway, which is in the one case intermediate to Lexington, and in the other to Louisville, a higher rate is charged. On traffic via Cincinnati. Lexington took the same rate as does Louisville, while rates to Midway are 5c and 6c higher. On traffic via Louisville the rate to Midway from Louisville was 13c, yielding 2.7c per ton-mile. HELD, (1) that it was discriminatory to

From—	To Midway.			To Louisville.			To Lexington.		
	Bottles, boxed.	Bottle-carrying boxes.	Wooden boxes.	Bottles, boxed.	Bottle-carrying boxes.	Wooden boxes.	Bottles, boxed.	Bottle-carrying boxes.	Wooden boxes.
Cincinnati, Ohio	18	18	15	9	12	12	13	13	10
Chicago, Ill.	30	35	32	16	18	18	28	30	27
Indianapolis, Ind.	24½	30½	27½	10½	13½	13½	22½	25½	22½
Pittsburgh, Pa.	24	27	26	18	21	21	18	21	21
Wheeling, W. Va.	24	27	26	18	21	21	18	21	21

charge higher rates on bottles and boxes to Midway via Lexington than rates from same points to Louisville via Lexington; (2) that the L. & N. R. R. had not justified higher rates from Central Freight Association territory to Midway than to Louisville or Lexington (3) that it was discriminatory for the S. Ry. and the C. N. O. & T. P. Ry. to charge carload rates to Midway via Cincinnati greater than were charged to Lexington by the following: Bottles, 2c; boxes and bottle-carrying boxes, 3c. Reparation denied. S. J. Greenbaum Co. v. L. & N. R. R. Co., 31 I. C. C. 699.

(u) When receivers or dealers in bituminous coal are located at the same terminals as are manufacturing industries, the rate must, in order to avoid discrimination, be applied to all alike. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 74.

(v) Reducing rates to enable Augusta to distribute in competition with Atlanta, and refusing to reduce the rates to other intermediate points constitutes undue preference in favor of Augusta and undue discrimination against intermediate points. Fourth Section Violations in the Southeast. 30 I. C. C. 153, 277.

(w) Establishment of joint rates on terminal basis from water-locked points on salmon while denying same to shingles not found to constitute unjust discrimination. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 370.

(x) Where unjust discriminations are alleged against one point and undue preference to another and the same rates are demanded as a remedy therefor, the evidence should show that the circumstances and conditions with respect to the transportation at the respective points are substantially the same. Eagle Distillery v. L. H. & St. L. R. R., 32 I. C. C. 195, 198.

(y) Complainant attacked the rates on commodities used in the distilling of whiskey, barrels, bags, bottles, corks, labels, bungs, glass stoppers, tissue paper and nails), from various points in the United States to Stanley, Daviess County, Ky., and the rates on whiskey from Stanley to practically all points in the United States to the extent on shipments east the rates exceed those of Henderson, Ky., and west through Owensboro, Ky. Owensboro, Stanley and Henderson are located on the line of the L. H. & St. L. R. R., which parallels and runs contiguous to the Ohio River wholly within the state of Kentucky. Owensboro is situated on the south bank of the Ohio River, 144 miles from Louisville, 42 miles from Evansville and 30 miles from Henderson. It has a population of 16,000, is a city of commercial importance and is served by three railroads. Henderson is likewise situated on the Ohio River and is served by the same three roads as Owensboro. It is 12 miles south of Evansville and has a population of about 11,500. and Ashtabula, O., distant 65 and 124 miles, respectively, were 70c and $1.00. Stanley has a population of about 250 and is served by only one road, the L. H. & St. L. Ry. It is a local non-competitive point located 10 miles from Owensboro, 20 miles from Henderson and about 1½ miles from the Ohio River. Complainant's distillery is located a few hundred feet from the river landing. As to the Owensboro rate, which in instances has been applied to Stanley when it has been given through rates, the L. H. & St. L. R. R. only fixes the factor known as the differential over Evansville. The inbound rates are made on combination of the rate to Owensboro and the local class rate from Owensboro to Stanley. Stanley has the rates asked for on malt and grain from Minneapolis, Chicago, Indianapolis, Peoria and East St. Louis and points basing on these gateways, which is the principal territory from which complainant draws its grain and malt. The rates on whiskey and distillers' dried grain from Stanley to all points to which joint rates were not

published, were made by adding an arbitrary of 2½c on carloads and 5c on less-than-carloads of whiskey and 1c on carloads of dried grains. Rates at Owensboro and Henderson are materially influenced by water competition as well as by rail rates. It could not be said Stanley has distinctive water competition, although the distillery is located at Grissom's Landing on the river, thereby giving to it the benefit of a water rate. Until the L. H. & St. L. R. R. was built the distillery received and transported all of its freight by boat and it now ships outbound about 60 per cent and also receives by water a substantial portion of its material. Of the commodities shipped by rail in 1913 79 per cent went to places having the Owensboro rate. Although complainant in shipping to the east is nearer than Henderson and in shipping west is nearer than Owensboro, either of these points, however, could ship via roads other than the defendant, without moving through Stanley and without involving a longer haul. HELD, where unjust discrimination is alleged against one point and undue preference to another and the same rates are demanded as a remedy therefor, the evidence should show that circumstances and conditions with respect to transportation at the respective points are substantially the same. This not appearing, the complaint is dismissed. Eagle Distillery v. L. H. & St. L. R. R., 32 I. C. C. 195.

(z) Where undue discrimination against one point or community and in favor of another is alleged, and it is shown that the carrier is not engaged in the transportation to or from the point or community said to be favored and has no voice in the making of the rates to or from such point, the charge of discrimination is not sustained. N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 216.

(aa) The Commission considered proposed tariffs canceling the application of Pacific terminal commodity rates to San Jose, Santa Clara and Marysville, Cal., points not directly accessible by ocean liners. These tariffs were filed by carriers to remove the discrimination found in the Santa Rosa Traffic Asso. cases, 24 I. C. C. 46, and 29 I. C. C. 65, to exist against Santa Rosa, Cal. Some 190 other California points enjoyed terminal rates, and the three city complainants objected that withdrawal of the privilege would constitute unjust discrimination in favor of such other points. Of these, San Francisco, Oakland, San Diego, San Pedro, Wilmington and East Wilmington were located directly on deep-water and ocean-going vessels actually discharged Atlantic freight at their wharves; at the other points, around Los Angeles and around San Francisco Bay, Atlantic liners transferred freight by lighters or smaller steamers or turned over the traffic to rail lines at San Francisco, absorbing their charges to meet the rates of the transcontinental rail lines. With the opening of the Panama Canal, however, the ocean lines had not only materially reduced their rates, but had discontinued the practice of absorbing the inland charges; thus eliminating water competition at these interior "terminals." HELD, (1) that the transportation of transcontinental commodity freight to San Francisco and the ports of that class is surrounded by conditions sufficiently dissimilar from those surrounding transportation to the three city complainants as not to present a case of unjust discrimination, but (2) that withdrawal of terminal rates to them while according them to the other 184 points constitutes unjust discrimination. Suspended tariffs cancelled. Transcontinental Commodity Rates, 32 I. C. C. 449.

(bb) In 26 I. C. C. 73 the Commission found that the rates charged by the M. St. P. M. & O. Ry. on excelsior bolts shipped from certain points in Wisconsin to St. Paul were unreasonable and unjustly prejudicial, and established reasonable rates applicable only on condition that the excelsior should be shipped out of St. Paul on the same line that had obtained the inbound haul. On rehearing complainant asked that similar rates be established from all Wisconsin points on defendant's lines and that the conditions as to outbound shipments be eliminated. For distance of 50, 100 and 150 miles the M. St. P. & S. S. M. Ry. unconditional rates from Wisconsin points to St. Paul were 5c, 7.5c and 7.5c and between Wisconsin points 5.5c, 7.6c and 8c, while the rates in the latter case were 2c, 3c and 3.5c where the product was reshipped by inbound carrier. There were no rates to St. Paul from points less than 40 miles distant, while to Rice Lake, Wis., for distances of less than 40 miles, rates were lower than those under the mileage scale. HELD, that defendant's rates on excelsior bolts in carloads from Wisconsin

points to St. Paul are unduly prejudicial to the extent that they exceed, for similar distances, rates from the same points to Rice Lake, and to the extent that transit arrangements are permitted in connection with rates to Rice Lake and denied in connection with St. Paul. Reparation denied. Keogh v. M. St. P. & S. Ste. M. Ry. Co., 32 I. C. C. 481.

(cc) Railroads serving Cairo and Metropolis, Ill., through Memphis as an intermediate gateway, through which the distance on their lines to Metropolis, Ill., is substantially the same as to Cairo, to which they maintain lower rates than to Metropolis, had no legal basis on which they could maintain that the discrimination practiced by them was not undue. St. L. I. M. & S. Ry. Co. v. U. S. 217 Fed. 80, 83.

(dd) Complainants assailed the commodity rates on roofing and building paper from St. Louis, East St. Louis, North St. Louis, and Kansas City, Mo., to Muskogee, Tulsa, and McAlester, Okla., as unreasonable and discriminatory in favor of such destinations compared with rates from St. Louis to Kansas City, Mo., and from St. Louis and Kansas City to Coffeyville, Kans., Joplin, Mo., and Fort Smith, Ark. From St. Louis to Kansas City, Joplin, Coffeyville, Fort Smith, Muskogee, Tulsa, and McAlester the rates were 11, 17, 23½, 34, 41, 44, and 44c, yielding $44, $68, $94, $136, $164, $176, and $176 per car, and 15.9, 20.48, 22.48, 32.6, 35.88, 41.5, and 31.09c per car mile, and (omitting Kansas City,) 10.2, 11.2, 16.3, 17.9, 20.8, and 15.5 mills per ton-mile, for distances of 277 (miles to Kansas City), 332, 418, 416, 457, 424, and 566 miles. Rates on canned fruits, structural iron, and soap from St. Louis to Joplin were 28c; to Coffeyville, 36c; and to Fort Smith, 32, 35, and 37c; as compared with rates of 39, 42, and 45c to Muskogee; the spread between Muskogee and the former points being in every case considerably less than on roofing and building paper. HELD that the rates complained of were unreasonable insofar as they exceeded the following; From St. Louis and East St. Louis to Muskogee, Tulsa, and McAlester 37, 38, and 40c; from Kansas City to the same points 26, 27, and 29c; minimum 40,000 lbs. Reparation awarded. Hooker-Hendrix Hdw. Co. v. M. K. & T. Ry., 34 I. C. C., 3.

(ee) Complainants attacked the rates to Coffeyville and Independence, Kans., from St. Louis, Mo., and Chicago, Ill., and points taking the same rates, and from points east of the Indiana-Illinois state line made by combination on St. Louis, as unreasonable and discriminatory compared with rates to Chanute, Parsons, Pittsburg, and Fort Scott, Kans., and Kansas City, Mo. The first class rates from St. Louis to Coffeyville, Independence, Chanute, Parsons, Pittsburg, Fort Scott and Kansas City were 98.5, 99, 85, 85, 74, 74, and 60c, for distances of 418, 414, 406, 387, 347, 338, and 277 miles. The relation of the rates on commodities was similar to that on classes. HELD, (1) that the class and commodity rates to Coffeyville and Independence from St. Louis were unreasonable to the extent that they exceeded the rates to Chanute by more than 5, 4, 3, 3, 2, 3, 3, 2, 5, 2, and 2c on the classes; and on beans, canned goods, coffee, syrup, starch, wrapping paper, and paper bags by more than 2, 2, 2, 1, 1, 1, and 1c; (2) that Chicago rates should preserve existing differentials over St. Louis rates; (3) reparation denied. Coffeyville Merc. Co. v. M. K. & T. Ry., 33 I. C. C., 122.

(ff) Complainant attacked the imposition of materially higher rates for the transportation of ex-lake grain from Georgian Bay ports to Middletown, Conn., than were charged to numerous other stations in New England, including Hartford, 15 miles north of Middletown, as unjustly discriminatory. Rates to the other states were as follows: Wheat, per 60 lb. bushel, 7.9c; Corn, 56 lb., 7.4c; barley, 48 lb., 6.3c; oats, 32 lb., 4.2c. On shipments to Middletown the 8c local from Hartford on active competitors, was added. The through rate to Hartford was not remunerative. HELD that defendants unduly preferred Hartford and other Connecticut points and unduly prejudiced Middletown. The contention that extension of the through rates to Middletown would merely enhance defendant's losses, was merely an explanation; not a justification. Reparation denied. Meech & Stoddard v. G. T. Ry. of Canada, 34 I. C. C., 39.

(gg) Where the short-line carrier makes a rate other carriers must meet it if they are to participate in the traffic. The sway of such competition is none the less because the rate made by the short line is lower than the rate permitted by a state commission for the same haul. But it is also true that where the carriers themselves have established

that rate to points which, in relation to other points, are similarly situated and competitive, such rate can hardly be deemed unreasonably low, and should be considered in determining whether the rates to such other points are unreasonably high. Coffeyville Merc. Co. v. M. K. & T. Ry., 33 I. C. C. 122, 124.

(hh) Complainant challenged the general adjustment of rates from Toledo, Ohio, upon horse-drawn freight vehicles, farm wagons, carts and dump wagons to Illinois, Wisconsin, Minnesota, all states west of the Mississippi, and to the Republic of Mexico, as inherently unreasonable and discriminatory because on a relatively higher basis than those from Chicago, Ill., and Milwaukee and Racine, Wis. Under official classification farm wagons, c. l. were fifth class, minimum 20,000 lbs for 36½ ft. cars with increased minimums for extra length; l. c. l. first-class. Spring freight vehicles, c. l. were 15% below second-class, but not less than third-class, minimum 11,000 lbs. for 36½ ft. cars, with increased minimums for extra length; l. c. l., uncrated, were rated first-class at not less than 4,000 lbs. per vehicle, and if crated, 1½ to 3 times first-class. Under western classification freight vehicles, farm wagons, and trucks in carloads, minimum 20,000 lbs. took class-A rates; less-than-carload rates ranged from 3½ times first-class to first-class. Toledo, 244 miles east of Chicago on the L. S. & M. S. R. R. was served by no carrier, except the Wabash R. R., having rails west of Chicago. The western termini of the latter were at Kansas City and Omaha. Chicago, Milwaukee, Racine and St. Louis were on the eastern limits of western classification territory. New York-St. Louis rates were 117% and New York-Toledo rates 78%, of New York-Chicago rates. Rates from Chicago and St. Louis west were on a Chicago differential over St. Louis approximately the differences in the eastern rates to those cities. From Toledo on the contrary, rates were made by combination on Mississippi River crossings; except on traffic to Texas points, to which the rates were a differential over St. Louis, and to certain western points to which through rates based on western classification were compelled by Pacific Coast water competition. Rates on farm wagons from Toledo to Little Rock, Ark., Denver, Colo., Reno, Nev., and California terminals were 47, 5. 100.5, 150, and 160c; from Chicago, 42, 90, 140 and 150c. On spring freight vehicles rates from Toledo to same destinations were 54, 103.5, 166 and 166c; from Chicago were 42, 90, 160, and 160c. HELD, that with respect to traffic conditions, following Commercial Club of Terre Haute, v. Vandalia R. R. Co., 29 I. C. C., 383, Toledo and the other cities were not similarly circumstanced, and the adjustment of rates from the former did not appear to be unreasonable. Sliding scale of minima on farm wagons justified. Complaint dismissed. Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582.

(ii) Complainant assailed the rate of $1.60 per ton on coke from Indianapolis, Ind., to Canton, Ill., yielding 6.6 mills per ton-mile for a distance of 240 miles, as unreasonable and discriminatory compared with $1.20 from Indianapolis to St. Louis, Mo., for approximately the same distance. In the latter case it appeared that the tonnage was heavier and but a one-line haul involved, whereas from Indianapolis to Canton the haul was over two or three lines. From Indianapolis to Galva and Galesburg, Ill., the rates were $1.85 and $2.05 yielding 6.4 and 7.6 mills per ton-mile for distances of 288 and 265 miles. HELD that the rate of $1.60 was not shown to be unreasonable nor unjustly discriminatory. Complaint dismissed. Parlin & Orendorff Co. v. C. C. C. & St. L. Ry., 33 I. C. C. 442.

(jj) The fact that fabricated articles are similar can not, standing alone, warrant a similarity of treatment where it also appears that the similar articles are in no wise competitive. Middletown Car Co. v. [illegible]. R. R. Co., 32 I. C. C. 185, 187.

(kk) Where same rates are sought as a remedy for alleged discrimination between two points, the evidence should show substantially similar circumstances and conditions. Eagle Distillery v. L. H. & St. L. Ry. Co., 32 I. C. C. 195.

(ll) When rates are alleged to be discriminatory it must be shown that transportation conditions under which rates compared were established are substantially similar. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 251.

(mm) Rates on sulphuric acid to Arkansas points and to Shreveport, La., were established under conditions substantially dissimilar to those surrounding movement to Muskogee, and are not shown to have resulted in undue prejudice to the latter. Muskogee Refining

Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-805.

(nn) Complainant attacked the rates and minimum carload weights on plaster and other gypsum products from Grand Rapids, Mich., to points in northern Illinois and southern Wisconsin as unjustly discriminatory compared with rates and minimum weights on shipments from Fort Dodge, Iowa, to such points; and especially alleged that the 7.9c rate from Grand Rapids to Chicago did not apply to as many delivery tracks in the Chicago switching district as did the 8c rate from Fort Dodge, thus overcoming the seeming advantage in rate The following rates were affective:

To	From Grand Rapids Miles	Rate	Minimum Wt.	From Fort Dodge Miles	Rate	Minimum Wt.
Lacrosse, Wis.	318	16.9	40,000	225	10.0	30,000
Milwaukee, Wis.	120	7.9	40,000	366	12.5	30,000
					8.0	60,000
Chicago, Ill.	177	7.9	40,000	373	10.0	30,000
					8.0	60,000
Quincy, Ill.	439	12.1	40,000	303	12.5	30,000

Rates of 12.9, 16.23, 13.1 and 13.1c from Grand Rapids to Janesville and Madison, Wis., and Fulton and Rockford, Ill., yielded 13.5, 16.1, 9.4 and 11.9 mills per ton-mile, for distances of 191, 202, 278 and 220 miles; as compared with rates of 10c from Fort Dodge to the same points, yielding 6.9 mills per ton-mile for distances of 301, 287, 252 and 289 miles. Whatever disadvantage Grand Rapids suffered in making deliveries on Chicago team tracks of western lines was offset by what Fort Dodge suffered in making deliveries on Chicago team tracks of eastern lines. HELD: (1) that circumstances and conditions governing transportation from both points did not warrant relatively higher rates on plaster and other gypsum products from Grand Rapids than those maintained from Fort Dodge to destinations in northern Illinois and southern Wisconsin; (2) that the maintenance of higher minimum weights from Grand Rapids was unjustly discriminatory; and (3) that no discrimination was shown against Grand Rapids regarding making deliveries in the Chicago switching district. Grand Rapids Plaster Co. v. L. S. & M. S. Ry., 34 I. C. C., 202.

(oo) In 33 I. C. C., 122, the Commission held that class and commodity rates from St. Louis, Mo., to Coffeyville and Independence, Kans., were too high as compared with rates to competing jobbing centers and directed that they should not exceed the rates to Chanute and Parsons, Kan. On reargument, defendants contended that the holding disrupted the rate fabric established under State of Kansas v. A. T. & S. F. Ry., 27 I. C. C., 673, and asked that they be permitted to continue the existing adjustment or increase the rates to Chanute and Parsons. HELD that no occasion had been shown for modifying the original report and order. Coffeyville Merc. Co. v. M. K. & T. Ry., 34 I. C. C. 231.

(pp) Complainant attacked the rates of $2.52 and $2.45 per 100 lbs. on furniture in mixed carloads from Grand Rapids, Mich,. and Rockford, Ill., respectively to Pacific coast terminals as unreasonable and discriminatory. The minimum weight applicable to California terminals was 12,000 lbs., to north Pacific terminals, 12,000 lbs. on 36 ft cars and higher minimums on longer cars. Rates on straight carloads were less to north Pacific terminals than to California terminals; but these rates were made to meet competition of north Pacific furniture factories. Rates on furniture were not subject to water compotition between Atlantic and Pacific coast ports. HELD that the rates attacked were neither unreasonable nor unduly discriminatory. Furniture Mfrs' Asso. of Grand Rapids v. A. A. R. R., 34 I. C. C., 262.

(qq) Complainant attacked the rate of 34c per 100 lbs. on lumber in carloads from Texas and Louisiana producing points to Las Cruces, N. Mex., as unreasonable and discriminatory, compared with the rate of 29c from the same points to Deming, New Mexico. Las Cruces was 44 miles and Deming 88 miles north of El Paso, Tex. From Lake Charles, La., a representative point of origin, the 29c rate to Deming yielded 5.47 mills per ton-mile; the 34c rate to Las Cruces, 6.37 mills. HELD, that the rate attacked

was unreasonable to the extent that it exceeded 28c. Reparation denied. Bascom-French Co. v. A. T. & S. F. Ry., 34 I. C. C. 388.

(rr) In 23 I. C. C. 31, the Commission directed that the T. & P. Ry., the H. E. & W. T. Ry., and the H. & S. R. R. abstain from exacting higher rates for transportation from Shreveport, La., to Dallas, and Houston, Tex., and points intermediate than were contemporaneously exacted for the transportation of the same articles from Dallas or Houston for an equal distance toward Shreveport. Petitioner asked that all carriers connecting Shreveport and points in Eastern Texas be subjected to like requirements. CLASS RATES: The Texas class rate scale, adopted in 23 I. C. C. 31, 45, "ran out" at 245 miles; and the 245-mile scale did not yield fair compensation for hauls beyond that distance. Transportation conditions at Shreveport and Eastern Texas were substantially similar to those between Texas and Oklahoma. HELD, that the Texas-Oklahoma scale might be used for hauls in excess of 245 miles. Following maximum first class rates prescribed for distances of 250, 300, 400 and 450 miles: 80, 89, 102, and 106c. CLASSIFICATION: Westbound shipments to intermediate points were subject to the western classification; eastbound shipments to the Texas classification, more liberal to shippers. HELD that unless the same classification applied unjust discrimination would result, and consequently that the western classification should govern on traffic from points in Eastern Texas toward Shreveport. COMMODITY RATES: On a distance basis the commodity rates applying from Shreveport to eastern Texas were much higher than the Texas state rates on the same commodities to the same points. HELD that defendants should cease and desist from charging higher rates upon any commodity from Shreveport into eastern Texas, than were charged for carriage of such commodity for an equal distance from points in eastern Texas toward Shreveport. RATES TO SHREVEPORT ON EAST TEXAS COTTON: Cotton from eastern Texas moved uncompressed to concentration points in that region on rates which, distance considered, were much lower than the rates on which it moved into Shreveport for concentration. HELD, that such practice constituted unjust discrimination against Shreveport. Directed that rates to Shreveport be fixed no higher than those to concentration points in eastern Texas. Railroad Comm'n of La. v. St. L. S. W. Ry., 34 I. C. C. 472.

(ss) The D. & N. M. Ry., petitioned for release from the order in 27 I. C. C. 83, wherein the Commission found that its carload rates on pulp wood from Minnesota points to gateways and junctions of connecting carriers in that state, applicable on shipments to points in Wisconsin and Michigan were unreasonable, and prescribed maximum rates of 1.7, 2.3, 2.7, and 3.08c on hauls of 10, 30, 50, and 70 miles; resulting in an average reduction of 31.5 per cent on prior rates. It appeared that this reduction affected only 10 per cent of defendant's traffic. Defendant showed a deficit of $13,126.83 for 1914; its total operating revenues being $24,928.42 less than in 1913; but this was due mainly to decrease in switching revenue. Its revenue per ton-mile was 0.67c and percentage of operating expenses to earnings, 71.3 per cent; as compared with 1c and 78.6 per cent on the D. & N. E., and 3c and 83.3 per cent on the M. R. L. & M. R. R. HELD, that petition for release from the order should be denied, the rates in question not appearing to be unduly low. Pulp & Paper Mfrs. Traffic Asso. v. C. M. & St. P. Ry., 34 I. C. C. 500.

(tt) Complainant attacked the carload and less-than-carload rates on glass tumblers, window glass, lamp shades not cut, inkwells, inkstands not cut, common glassware, n. o. s.; skylights, roofing and floor glass; and polished wire glass, from Morgantown, W. Va., to Buffalo, N. Y., Chicago, Ill., and Youngstown, Ohio, Detroit, Mich., Indianapolis, and St. Paul, Minn., Pittsburg, Pa., and St. Louis, Mo., as unreasonable and discriminatory compared with rates to the same points from points in the Clarksburg, W. Va., and Pittsburg, Pa., districts. Taking Chicago as typical, carload rates thereto from the Morgantown, Clarksburg, and Pittsburg districts were, for respective average distances of 536, 528, and 472 miles, on window glass and common tumblers, 20.9, 18.9, and 18.9c; on common glassware, 24.1, 24.1, and 22.1c; on roofing glass, 20.9, 20.9, and 18.9c; on polished wire glass exceeding 120 inches, 27.7, 27.7, and 25.2c; and on polished wire glass not exceeding 120 inches, 24.1, 24.1, and 22.1c. HELD that the rates attacked, except those to Youngstown, Cleveland,

and Buffalo were unjustly discriminatory against Morgantown, and the rates from the Clarksburg or Pittsburg district established as maxima. Existing differentials between Morgantown and Pittsburg and Morgantown and Clarksburg not to be exceeded in making readjustments. Athens Glass Co. v. B. & O. R. R., 35 I. C. C. 22.

§5. Test of Discrimination.

(a) The provision of the Act requiring that discrimination must not be unjust, and that preferences and advantages to any particular firm, corporation or locality must not be undue or unreasonable, necessarily implies that strict uniformity is not always to be enforced, but that all circumstances and conditions affecting carriers and shippers should be considered. J. A. Adams & Sons Co. v. V. S. & P. Ry. Co., 29 I. C. C. 52, 60.

(b) Discrimination under the third section, to be undue and unlawful, must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored; and a competitive relation between the commodities in the cases of which discrimination is alleged is essential. Board of Trade of Chicago v. A. T. & S. F. Ry. Co., 29 I. C. C. 438, 443.

(c) Although the third section does not carry the phrase embodied in section 2, "under substantially similar circumstances and conditions," it contains the words, "in any respect whatsoever," and therefore the thought contained in section 2 must be present to the mind in considering under section 3 what preferences or advantages are undue or unreasonable. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 167, 168.

(d) Because the cost of handling business from Mississippi River, where concentration of freight occurs, is less than from small interior stations affords no justification for discrimination. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 200.

(e) A discrimination involves the idea of a relationship between the person favored and the person injured. In re Mileage Books, 28 I. C. C. 318, 324.

(f) Carriers' practices in granting free transportation under section 22 must not result in unjust discrimination under section 2. Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406, 408.

(g) Rates from the East to Springfield are approximately 6 per cent higher than to Peoria. It was testified under these circumstances industries have been unable to locate at Springfield. Such a disadvantage in transportation charges must certainly be a serious handicap to any locality. Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C. 511, 514.

(h) Intermediate location and higher rates, as compared with another point, does not of itself show a violation of section 3. Santa Rosa Traffic Assn. v. S. P. Co., 29 I. C. C. 65, 68.

(i) To be undue, the discrimination must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored. Chicago Board of Trade v. A. T. & S. F. Ry. Co., 29 I. C. C. 438, 443.

(j) Not all discriminations are unlawful, but only such as are undue or unreasonable, if based on reason and good cause, discriminations cannot be condemned as unreasonable. Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 31 I. C. C. 311, 318.

(k) The test of discrimination is the ability of one of the carriers participating in two through routes to put an end to the discrimination by its own act. Elevation Allowances at St. Louis and E. St. Louis, 30 I. C. C. 696, 699.

(l) Discrimination is forbidden only when it is unjust. Not every inequality in rates constitutes a violation of the law. Preferences and prejudices are not prohibited unless they are undue. Eagle Distillery v. L. H. & St. L. R. R. Co., 32 I. C. C. 195, 198.

(m) When rates are alleged to be discriminatory, it must of course be shown that transportation conditions under which the rates compared were established are substantially similar. Chamber of Commerce, Houston, Texas, v. I. & G. N. Ry. Co., 32 I. C. C. 247, 251.

(n) As a matter of law, a charge of discrimination cannot be brought by a locality against a railroad unless served either directly by its own route or by a

joint arrangement with other railroads for a through rout and a joint rate. St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed. 280, 283.

(o) Complainant attacked the rates on lumber in carloads from Norman, N. C., to points north and east of Virginia cities as unreasonable and discriminatory compared with rates from Troy, Wadeville, and Mount Gilead, N. C., to the same destinations. The latter points were on the main line of the R. C. & S. Ry., 8, 16, and 22 miles, respectively, west of Star, N. C., while Norman was 17 miles south of Star on a subsidiary branch line. The difference in distance from Norman and from the other points was therefore negligible, as the total hauls averaged from 700 to 800 miles. The rate from Norman to Norfolk, Va., was 13c; for the other points 12c. The total movement on the Norman branch amounted to only 3430 tons, 81 per cent lumber and forest products, and 60 per cent of the equipment being moved in empty; as compared with a movement of 4687 tons on the line to Mount Gilead, only 62 per cent of which consisted of lumber, the equipment used to haul in freight being sufficient for the outbound movement. HELD that the rates from Norman had not been shown to be unreasonable and that the circumstances and conditions of transportation were sufficiently dissimiliar to those on the Mt. Gilead line to justify a difference of 1c in the rates. Complaint dismissed. Snow Lumber Co. v. R. C. & S. Ry., 33 I. C. C., 587.

III. JUSTIFICATION.

§5½. In General.

(a) No defense to charge of unjust discrimination to show that adjustment to lower rated point was made years ago, and has since been maintained. Lagrange Chamber of Commerce v. A. & W. P. R. R. Co., 28 I. C. C. 178, 184.

(b) That certain cities happen to be assembling points cannot give to those points a better freight rate than is enjoyed by towns beyond. Iowa State Board of R. R. Com'rs vs. A. E. R. R. Co., 28 I. C. C., 193, 200.

(c) Complainant attacked the rates of $1.10 per gross ton on hematite iron ore, in carloads, from Fruitland and Ontario, N. Y., to Emporium, Pa., yielding 6 mills per ton-mile for a distance of 183 miles, and $1.60 per gross ton on the same traffic to Curtin, Milesburg, Bellefonte, Saxton, Riddlesburg and Earlston, Pa., yielding 6.2, 6.1, 6.1, 4.3, 4.3 and 4.1 mills per ton-mile for distances of 256, 259, 262, 367, 372 and 388 miles, as unreasonable and discriminatory. Fruitland and Ontario, but three miles apart, are local points on the N. Y. C. lines 20 miles northeast of Rochester, while the designated destinations are on the Penn. R. R. or H. & B. R. M. R. R., in central Pennsylvania. Mines at Fruitland and Ontario compete with those of the Mesaba region in Minnesota and Benson Mines, N. Y., 150 miles northeast of Fruitland, the guaranty bases upon which ore is sold being respectively 44, 52½ and 65 per cent of iron, and destination value $3.80 to $4, $4.15 to $5.50 and $5.50 to $6.50 per gross ton. The cost of loading is greater at Fruitland and Ontario than at the Mesaba or Benson Mines. Rates from Buffalo, N. Y., to Emporium, Curtin, Milesburg, Bellefonte, Saxton, Riddlesburg and Earlston are respectively $0.75, $1.15, $1.15, $1.15, $1.45, $1.45 and $1.45, yielding 6.1, 5.3, 5.3, 5.3, 4.9, 4.8 and 4.6 mills per ton-mile for distances of 123, 214, 217, 220, 296, 301 and 317 miles; and rates from Benson Mines to the same destinations are $1.40, $1.60, $1.60, $1.60, $1.85, $1.85 and $1.85, yielding 4, 4.3, 4.3, 4.3, 4.1, 4.1 and 3.9 mills per ton-mile for distances of 368, 366, 369, 372, 448, 453 and 469 miles. Complainant's average loading at Fruitland and Ontario is 45 tons per car, and the per-car earnings $49.50 on shipments to Emporium. It appears that no ore is shipped from Benson Mines to Emporium. Curtin, Milesburg and Bellefonte are grouped with Earlston, Saxton and Riddlesburg, more distant points, with respect to shipment from Fruitland and Ontario, but are not grouped with them on shipments from Buffalo, thus making the adjustment of rates favorable to Buffalo. In Ontario Iron Ore Co. v. N. Y. C. & H. R. R. R., 21 I. C. C. 204, the Commission reduced the rate from Lakeside (now Fruitland) to Earlston and Saxton from $1.90 to $1.60. HELD, that the present rates from Fruitland and Ontario to Emporium, Earlston, Saxton and Riddlesburg have not been shown to be unreasonable, but that the present rate of $1.60 to Curtin, Milesburg and Bellefonte, Pa., is unreasonable to the ex-

tent that it exceeds $1.40. Reparation denied. Ontario Iron Ore Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 566.

(d) Complainant attacked the rate of 6c on tanbark from Delrio, Tenn., to Asheville, N. C., a distance of 54 miles, as discriminatory compared with rates to Asheville from North Carolina and South Carolina points. Subsequent to filing of complaint the S. Ry. filed a tariff canceling the application, from South Carolina points to North Carolina tanning points, of the North Carolina mileage scale, thsu placing tanbark on the rate basis of lumber, being Class P rates in the absence of special commodity rates. The minimum on lumber is 30,000 lbs., while to load tanbark to 24,000 lbs. it is necessary to stack it, and it does not unload as rapidly as lumber. The rate in North Carolina for a distance of 50 to 55 miles is 3½c; in Tennessee, 6c; and that proposed for a similar haul from South Carolina, 5¾c. HELD, that the 6c rate from Delrio to Asheville is not discriminatory. Complaint dismissed. Hans Rees' Sons v. S. Ry. Co., 30 I. C. C. 585.

(e) Complainant attacked the carload rates on excelsior from Dubuque, Ia., to Chicago and Peoria, Ill., St. Louis, Kansas City and St. Joseph, Mo., Leavenworth, Kan., and Omaha, Neb., as unreasonable and discriminatory compared with rates from St. Paul, Minn., to the same destinations. The rates involved are given in the following table:

To—	From St. Paul.			From Dubuque.		
	Distance in miles.	Rate prior to Sept. 15, 1912.	Rate subsequent to Sept. 15, 1912.	Distance in miles.	Rate prior to Sept. 15, 1912.	Rate subsequent to Sept. 15, 1912.
Chicago	398	13.5	10	172	10	10
Peoria	425	13.5	10	191	10	10
St. Louis	576	18	12.5	347	13	13
Omaha	371	22	14	333	17	17
Kansas City	486	22	14	377	17	17
Leavenworth	486	22	14	379	17	17
St. Joseph	467	22	14	359	17	17

As indicated, on Sept. 15, 1912, the rates from St. Paul were reduced, while those from Dubuque remained as before. These reductions were made as the result of holdings of the Commission in Keogh v. C. B. & Q. R. R. Co., 24 I. C. C. 606, and, Rates on Excelsior and Flax Tow from St. Paul, Minn., 26 I. C. C. 689. The 17c rate from Dubuque to Missouri River points is the Class C rate under Western Classification for excelsior in carloads. Class C rate from St. Paul to Omaha is 22c, and 23c to other Missouri River points. HELD, that the present adjustment of rates to Chicago, Peoria and St. Louis is not unreasonable nor discriminatory; but that a reasonable rate from Dubuque to Omaha, Leavenworth, St. Joseph and Kansas City should not exceed 14½c per 100 lbs., minimum 20,000 lbs., subject to Rule 6-B, Western Classification. Reparation denied. Morris, Johnson, Brown Mfg. Co. v. I. C. R. R. Co., 30 I. C. C. 443.

(f) That vested interests will be impaired by a readjustment of rates is no valid reason for not correcting an inequitable condition. Santa Rosa Traffic Asso. v. S. P. Co., 29 I. C. C. 65, 66.

(g) Agreement between shippers and carriers no justification for unduly prejudicial rates. Oklahoma Traffic Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 129, 132.

(h) Lack of prosperity and because cost of assembling raw material is greater than competitor's no justification for establishment of lower rates. Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502.

(i) That a short line is violating the commodities clause is no defense to a charge of unjust discrimination. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 693.

(j) If undue prejudice exists it must be found primarily in the case of the shipper, community or description of traffic which is thus affected; but when different shippers are charged the same rates for services the value of which to them is the same, it is difficult to say how any such prejudice can exist. Transportation and traffic conditions may well be considered after the existence of prejudice is found. They may then properly bear on the question whether that prejudice is undue. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

(k) Complainant attacked the rates on cotton from producing points in Oklahoma to St. Louis, Mo., as unreasonable and discriminatory against St. Louis and in favor of Galveston, Tex.; Fort Madison, Ia., and Rock Island, Ill. Most Oklahoma points enjoyed a blanket rate of 70c to both St. Louis and Galveston. The average rates to St. Louis and Galveston were 69½c and 68 1-3c, respectively, for average distances of 578 and 485 miles. To the Mississippi River crossings, East St. Louis, Ill., and Rock Island, 40 miles more distant, rates were the same. But little cotton was shipped to St. Louis, even where the rates favored that city; Galveston enjoying an advantage in that boats operating from that point handled cotton exclusively. HELD, that the rates attacked were neither unreasonable nor discriminatory. Complaint dismissed. St. Louis Cotton Exch. v. M. K. & T. Ry. Co., 32 I. C. C. 501.

(l) Commission can not sanction rates that lend themselves to preference of one individual or locality over another. Empire Coke Co., 31 I. C. C. v. B. & S. R. R. Co., 31 I. C. C. 573, 577.

(m) It is difficult to say how prejudice can exist when different shippers are charged same rates for services the value of which to them is the same. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

§6. Carrier as Shipper or Consignee.

(a) It is unlawful to apply one rule when a shipment is for a railroad and a different rule when for a private individual, if the traffic is like in kind and the circumstances and conditions of transportation are substantially similiar. Doran & Co. v. N. C. & St. L. R. R., 33 I. C. C., 523, 531.

§7. Carrier Not Serving Prejudiced Point.

(a) Not essential that a carrier actually reach a point to engage in its traffic or discriminate against it. Lagrange Chamber of Commerce v. A. & W. P. R. R. Co., 28 I. C. C. 178, 184.

(b) It is possible for a carrier to discriminate unjustly and unlawfully against a point which it does not reach over its own rails. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 258.

(cde) Neither lines reaching points of origin or destination could establish any rate without the concurrence of other lines. The Commission cannot, therefore, hold that the situation complained of is within the control alone of the lines reaching a city complaining of undue discrimination. Montezuma v. C. of G. Ry. Co., 28 I. C. C. 280, 283.

(f) A carrier should not be permitted to retain to itself the lumber market at points on its line for the benefit of producing points on its line to the exclusion of producing points on other lines. Lumber Rates, Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 474.

(g) Rate from New York to Memphis not found unreasonable or unduly prejudicial as compared with rate from New York to St. Louis, where carriers having direct one-line haul to St. Louis do not serve Memphis, and where carriers serving Memphis reach St. Louis only by two or three line hauls. Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547.

(h) Discrimination in violation of section 3 not found to result in establishment of lower rate from Mobile than in effect from New Orleans, where line from Mobile does not reach New Orleans except by connections. Molasses Rates from Mobile, 28 I. C. C. 666, 669.

(i) Carriers to California terminals cannot be held responsible for any discrimination resulting by reason of lower rates in effect via the lines to the north coast. Rates on Gasoline Engines and Windmills, 29 I. C. C. 643, 645.

(j) Fact that defendants have established through routes and joint rates from C. & O. Ry. mines to K. & M. Ry. destinations, while refusing complainant such routes and rates, held not to constitute unlawful discrimination under the principle that the test of discrimination is the ability of one of the carriers participating in the two through routes to put an end to the discrimination by its own act. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 680.

(k) A carrier is responsible for unjust discrimination in rate adjustment as between two places if it serves both places or participates in their carrying trade. S. J. Greenbaum Co. v. L. & N. R. R. Co., 31 I. C. C. 699, 707.

(l) As a matter of law, the charge

of discrimination cannot be brought by a locality, either directly by its own route or by a joint arrangement with other railroads for a through route and a joint rate. St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed., 280, 283.

(m) A carrier cannot be held to account for an advantage in rates which a competing city with a shorter haul to the same destination enjoys via a different carrier. Cement Rates to Stations on the M. C. R. R., 32 I. C. C. 540, 541.

(n) Carrier responsible for unjust discrimination in rate adjustment as between two places if it serves both or participates in their carrying trade Greenbaum Co. v. L. & N. R. R. Co., 31 I. C. C. 699, 707.

§8. Competition.

See Competition.

(1) In General.

(a) It is well settled both by decisions of the Commission and of the courts that a charge of undue discrimination cannot be predicated upon conditions which result from controlling competition. Kenner Truck Farmers' Ass'n. I. C. R. R. Co., 32 I. C. C. 1, 10.

(b) It is a foregone conclusion that competition between jobbing houses and factories for trade cannot exist without the jobbing houses and factories, and if a certain adjustment of rates prevents one town from securing the jobbing houses and factories in competition with another a situation is presented which the Act was designed to correct. When the question of rates enters into the competition of cities and towns in any respect whatever, whether the competition is one for trade, factories, or people, complaints alleging unjust discrimination will be entertained. Transcontinental Commodity Rates, 32 I. C. C. 449, 454.

(c) To accept less than local rates to one point in noncompetitive territory and to exact local rates on traffic to other points may create a preference at that point and a prejudice against other points. Bowling Green Business Men's Ass'n. v. L. & N. R. R. Co., 31 I. C. C. 1, 4.

(d) Charge of undue discrimination can not be predicated upon conditions which result from controlling competition. Kenner Truck Farmers' Asso. I. C. R. R. Co., 32 I. C. C. 1, 10.

(e) In order to establish that discrimination between commodities is undue, competition must be shown. Great Western Oil Refining Co. v. A. T. S. F. Ry. Co., Unrep Op. A-937.

(f) A contention that there is no justification in meeting the competition from one city and not from a second when the circumstances are substantially similar, while sound in its general application, is without weight unless under advantage on one side and unjust discrimination on the other, arise from the difference in treatment. Memphis Grain and Hay Asso. v. I. C. R. R., 34 I. C. C. 315, 318.

§8. (3) Railroads in General.

See Competition.

(a) While carriers may and frequently do, establish and maintain rates lower than they could be required to publish to meet competitive or other conditions at a particular point, they are not thereby relieved from the obligation imposed by law to remove unjust discrimination which may arise from meeting competition or other conditions at one point and refusing to meet the same conditions at another point entitled to the same consideration. San Toy Coal Co. v. A. C. & Y. Ry., 34 I. C. C., 93, 98.

(b) Complainants attacked the rates on lumber in carloads from points in Virginia on the Durham division of the N. & W. Ry., east of Roanoke and south of the James River, to points in the Buffalo-Pittsburg and Central freight Ass'n. territories, as unreasonable and discriminatory compared with rates from the "Virginia Cities," and common points from which "Virginia City" rates applied. Rates from Virginia common points to Pittsburg, Pa. and Columbus, Ohio, were 16c per 100 lbs., induced by competition with the water-and-rail rates between Baltimore, Md., and the west. Rates from the Virginia defined points of origin were as follows: (See Table on Page 275).

From Midlothian, Amelia, Jetersville, Jenning, and Burkeville, points 13, 36, 43, 50 and 54 miles southwest of Richmond on the S. Ry., rates to Pittsburg and Columbus did not exceed 16.5 and 19.5c respectively; but the S. Ry. was not the rate-making line between Virginia cities and Pittsburg and Columbus. The V. Ry. connecting Roanoke and Suffolk, Va., crossing north and south lines

From	Distance to Lynchburg Miles	To Pittsburg		To Columbus	
		Distance Miles	Rate Cents	Distance Miles	Rate Cents
Rustburg	14	522	16.0	517	19.0
Gladys	23	531	16.0	526	19.0
Brookneal	34	542	16.5	537	19.5
Nathalie	44	552	17.0	547	20.0
Houston	59	567	17.0	562	20.0

of other carriers, met at the junction points their through rates of not more than 16c to Pittsburg and 19 1-2c to Columbus, observing these as maxima from all stations between such junctions. Rates from the territory of origin in question were not blanketed, but threaded. HELD, (1) that the Virginia City rates, including lumber rates, were made to meet conditions of transportation and competition that did not exist at the points where complainants lumber mills were located; (2) that the common point rate adjustment at the Virginian cities if overthrown, would result in a permanent realignment of rates which would be far reaching; (3) that the existing adjustment should not be overthrown on a record involving but one commodity; (4) that the rates in question, though higher than rates from the Virginian Cities, were not unreasonable. Complaint dismissed. Massie & Pierce Lumber Co. v. N. & W. Ry., 33 I. C. C. 14.

§8. (4) Short-Line Carriers.

(a) Complainant attacked the rates on lumber from Sturgeon and Laclede, Idaho, and Spokane and Deer Park, Wash., to destinations in Montana, of which Butte, was typical, as unreasonable and discriminatory compared with lower rates from Coeur d'Alene, Rathdrum, and Sand Point, Idaho, to the same destinations. The following table indicates conditions:

From	To	Via	Miles	Rate	Earnings per ton-mile
Deer Park	Butte	G.N.	696.1	$0.28	$0.0080
Spokane	Butte	G.N.	697.4	.25	.0072
Sand Point	Butte	G.N.	622.4	.22	.0070
Coeur d'Alene	Butte	N.P.	370.0	.175	.0095
Laclede	Butte	G.N.	636.5	.25	.0079
Sturgeon	Butte	I.&W.N.;G.N.	684.0	.30	.0088
Rathdrum	Butte	I.&W.N.;G.N.	687.1	.30	.0087

Shipments from Sturgeon, Laclede, and Deer Park were via the circuitous route of the G. N. Ry., which did not attempt to meet the rates of the N. P. Ry. or the C. M. & St. P. Ry. From Spokane, however, on all three lines, the rate to Butte was 20c, as compared with a rate of 17½c from Coeur d'Alene, for a haul some 28 miles greater. HELD: (1) That there was no ground for requiring the G. N. Ry. to meet the rates in effect over the shorter lines; but (2) that the rate of 20c from Spokane to Butte was unreasonable to the extent that it exceeded 17½c. Reparation denied. Wilson-Leuthold Lbr. Co. v. C. M. & S. P. Ry., 34 I. C. C., 146.

(b) Complainant attacked the rates on lumber from South Pittsburg, Tenn., to Ohio and Mississippi River crossings, 17 and 22c per 100 lbs. respectively, as unreasonable and discriminatory compared with rates of 13, and 18c from Chattanooga, Tenn., to the same points. The latter rates of the N. C. & St. L. Ry. were compelled by competition of short lines. Pittsburg was on the Tennessee River 33 miles west of Chattanooga, and defendant's tariff provided that lumber might be shipped at the 13c rate "when from Tennessee landings, or when manufactured from logs drawn from Tenn., River landings." Most of complainants' lumber was manufactured from logs drawn from the interior by rail. HELD, that the existing rates on lumber from Pittsburg to the Ohio and Mississippi River crossings were unreasonable and discriminatory. The wording of the tariff was such that properly construed Pittsburg was entitled to the

lower rates. Haskew Lumber Co. v. N. C. & St. L. Ry., 34 I. C. C. 333.

§8. (5) Water Carriers.

See Water Competition.

(a) Rates to Louisville vary according to the grade of coal, whereas to Lebanon one rate governs the carriage of all grades. Not found unjustly discriminatory, river and rail competition influencing rates. Lebanon Commercial Club v. L. & N. R. R. Co., 28 I. C. C. 301, 304.

(b) While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate cannot be justified on the ground that it is necessary to suppress water competition. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 583.

(c) If water competition at a given point compels a carrier to discriminate in rates against a point not so favorably situated, the amount of the discrimination must not be greater than the dissimilarity of circumstances demand. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 582.

(d) If transcontinental carriers, in competition with ocean liners, see fit to reduce transcontinental commodity rates to ports located directly on deep water, they cannot be charged with unjust discrimination for not extending the same rates to other points not so advantageously situated from not being points of direct contact with Atlantic-Pacific ocean competition. Transcontinental Commodity Rates, 32 I. C. C. 449, 455.

(e) Transcontinental carriers can not be charged with unjust discrimination for not extending same rates to points not of direct contact with Atlantic-Pacific ocean competition. Transcontinental Commodity Rates, 32 I. C. C., 449, 455.

§9. Disadvantage of Location.

See Equalization of Rates, §3.

(a) Difference in cost of production cannot be recognized as a basis for the adjustment of freight rates between different localities. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 262.

(b) Complainants allege that denial of free reconsignment at Milwaukee would constitute unjust discrimination in favor of Chicago. This is due to rate situation. Coal to Chicago moves on local or terminal rates, and to Milwaukee on proportional rates. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 657.

(c) Complainant challenged the general adjustment of rates from Toledo, O., upon horse-drawn freight vehicles, farm wagons, carts and dump wagons to Illinois, Wisconsin, Minnesota, all states west of the Mississippi, and to the Republic of Mexico, as inherently unreasonable and discriminatory on a relatively higher basis than those from Chicago, Ill., and Milwaukee and Racine, Wis. Under official classification farm wagons, c. l., were fifth class, minimum 20,000 lbs. for 36-ft. cars, with increased minimums for extra length; l. c. l. first class. Spring freight vehicles, c. l., were 15 per cent below second class, but not less than third class, minimum 11,000 lbs. for 36-ft. cars, with increased minimums for extra length; l. c. l., uncrated, were rated first class at not less than 4,000 lbs. per vehicle, and if crated, 1½ to 3 times first class. Under western classification freight vehicles, farm wagons and trucks in carloads, minimum 20,000 lbs., took class A rates; less-than-carload rates ranged from 3½ times first class to first class. Toledo, 244 miles east of Chicago, on the L. S. & M. S., was served by no carrier, except the Wabash R. R., having rails west of Chicago. The western termini of the latter were at Kansas City and Omaha. Chicago, Milwaukee, Racine and St. Louis were on the eastern limits of western classification territory. New York-St. Louis rates were 117 per cent and New York-Toledo rates 78 per cent of New York-Chicago rates. Rates from Chicago and St. Louis west were on a Chicago differential over St. Louis, approximately the differences in the eastern rates to those cities. From Toledo on, the contrary, rates were made by combination on Mississippi River Crossings; except on traffic to Texas points, to which the rates were a differential over St. Louis, and to certain western points to which through rates based on western classification were compelled by Pacific Coast water competition. Rates on farm wagons from Toledo to Little Rock, Ark.; Denver, Col.; Reno, Nev., and California terminals were 47.5c, 100.5c, $1.50 and $1.60; from Chicago, 42c, 90c, $1.40 and $1.50. On spring

freight vehicles rates from Toledo to same destinations were 54c, 103.5c $1.66 and $1.66; from Chicago were 42c, 90c, $1.60 and $1.60. HELD, that with respect to traffic conditions, following Commercial Club of Terre Haute v. Vandalia R. R. Co., 29 I. C. C. 383, Toledo and other cities were not similarly circumstanced, and the adjustment of rates from the former did not appear to be unreasonable. Sliding scale of minima on farm wagons justified. Complaint dismissed. Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582.

(d) The Commission cannot fix a rate on lumber lower than on sash and doors solely to enable sash and door manufacturers to offset the handicap which the transportation of waste places upon them. It would be equally unlawful to effect an adjustment of rates which would deprive them of any of the advantages arising out of their location. Anson, Gilkey & Hura Co. v. S. P. Co., 33 I. C. C., 332, 338.

§10. Encouragement of Own Territory.

See Origin of Traffic; Thru Routes and Joint Rates, §9.

(a) Complainants attacked the rate of $1.50 per ton on dry lumber from Star, Cal., to Verdi, Reno, Lovelock, Fallon, Winnemuca and Battle Mountain, Nev., Lyons, Iowa, Salt Lake City, Utah, and Chicago, Ill., compared with a rate of $1.00 when destined for Truckee, Cal. Star, Cal., is a shipping point for lumber 6 miles northwest of Boca on the Boca & Loyalton R. R. The road is 45 miles in length, extending from Boca, which is a junction point with the S. P. R. R., to Portolo, Cal., a junction with the Western Pacific R. R. The dry lumber weighs approximately 2,500 lbs. per 1000 feet. Truckee is on the main line of the S. P. R. R., 8 miles west of Boca, and Verdi, Nev., is one the same line 16 miles east of Boca. The local rate of the S. P. R. R. from Boca to Truckee is 40c per ton and to Verdi 50c per ton.

Effective Nov. 7, 1910, the rate of $1.25 per 1,000 feet from Star to Boca, applying on traffic to Truckee, was cancelled, and the rate of $1.50 per ton Star to Boca became applicable to all traffic. Between February 20 and November 7, 1910, the Boca and Loyalton R. R. received $1.00 per ton for the haul Star to Boca, applicable on shipments to Truckee, and received $1.50 per ton for the same haul on traffic destined to other points. Effective August 5, 1911 a rate of $1.50 per ton Star to Truckee was established. Effective June 12, 1913, this rate was cancelled and a rate of $1.90 per ton Star to Truckee was established. Complainant agreed that no objection would be made to the rate of $1.50 from Star to Boca if it were made applicable to all traffic irrespective of destination. The gravamen of the complaint was that this rate of $1.50 per ton, applicable to interstate business, was unjustly discriminatory as compared with the equivalent rate of $1.00 applicable on Truckee business moving during the period from February 20 to November 7, 1910. It was shown that a large part of the lumber that may be reached by the Boca & Loyalton R. R. has been cut away; that the traffic on the line is sparse; that the revenues are meager and insufficient to pay operating expenses and interest on bonded indebtedness. HELD, that the charging of the higher rate, Star to Boca, on shipments destined to Verdi, than on those destined to Truckee was unduly preferential to the latter; that the complainant was damaged to the extent of 50c per ton, being the difference between the rates applicable on shipments destined to the two points. Reparation awarded. Worn v. B. & L. R. R., 32 I. C. C. 58.

(b) Carrier may not by rate adjustments reserve territory it serves for plants located on its own lines. Oklahoma Portland Cement Co. v. A. L. & G. Ry. Co., 32 I. C. C. 221.

(c) Carriers may not establish restricted trade zones. Commercial Club of Joplin, Mo. v. M. P. Ry. Co., 32 I. C. C. 226, 232.

§11. Low Rate to Favored Point.

(a) Carriers may not by means of their intrastate rates discriminate against traffic moving in interstate commerce. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 570; H. E. & W. T. Ry. Co. v. U. S., 234 U. S. 342.

(b) Complainants attacked the average rates of 17c and 18c on wheat and 15c to 17c on corn, for transportation from points in southeastern Kansas, southwestern Missouri, northeastern Oklahoma and northwestern Arkansas to Memphis, Tenn., an average distance of 350 miles, as unreasonable compared with the rates from territory to the north and west, and prayed that the rates attacked be reduced 4c per 100

lbs. The proportional rate on wheat from Kansas City to Memphis was 14c, the traffic passing through a portion of the complaining territory en route. In 22 I. C. C. 422, a rate of 20½c on wheat and 17½c on corn, on shipments between the same territory and Little Rock, an average distance of 350 miles, was established, a blanket rate of 23c being declared discriminatory. HELD, that the rates to Memphis were not unreasonable in themselves, nor unduly high as compared with more distant territory, and that the Kansas City rate, being proportional and only applicable to traffic which had reached Kansas City by rail was essentially a division of a through rate, and thus did not cause discrimination. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 29 I. C. C. 28.

(c) The Commission granted a rehearing in 26 I. C. C. 104, on rates on pulpwood in carloads from certain Michigan points to Rhinelander, Wis. Subsequent to the first hearing, the Wisconsin Commission had approved rates up to 300 miles, less for similar distances than those complained of, which rates had been voluntarily applied by the C. M. & St. P. R. R. and C. & N. W. Ry. from Michigan points to Wisconsin mills, and the defendant had voluntarily adopted them on shipments from Minnesota points to points in Wisconsin. From the state line at Menominee River to Rhinelander was 85 miles, for which the Wisconsin Commission had prescribed a rate of 2.83c. Through rates from Michigan points, constructed on basis of distance rates to the Menominee River, similar to those prescribed in Pulp & Paper Mfgrs. Traffic Asso. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, plus the rate aforesaid, would be 5.91c, 6.15c, 6.71c and 7.11c from Trenary, Manistique, Bovee and Spur No. 447, Mich., as compared with existing rates of 6c, 6c, 6.5c and 6.5c. HELD, that the fact that other lines had adopted the Wisconsin scale on shipments from Michigan points to points in Wisconsin was not conclusive that higher rates charged by defendant from points of origin in question to Rhinelander was unreasonable or unduly discriminatory. Nor was the fact that defendant might have maintained lower rates. Conclusions of original report adhered to. Complaint dismissed. Rhinelander Paper Co. v. M. St. P. & S. Ste. M. Ry. Co., 31 I. C. C. 555.

(d) Complainant attacked the domestic rate of 21c on blackstrap molasses from New Orleans and other Louisiana points to St. Louis, Mo., and East St. Louis, Ill., as discriminatory compared with a special import tank-car rate of 15c, and also attacked a rate of 29c on molasses, including domestic blackstrap, from the same points of origin to Clinton and Lyons, Ia., as discriminatory compared with a special import rate of 25c. The New Orleans refineries produced from 2,500,000 to 3,000,000 gallons per annum, while importations at that port ranged as high as 16,000,000 gallons. The import rates mentioned were established by carriers serving Louisiana points to meet the 15c rate of the M. & O. R. R. from Mobile to St. Louis, approved by the Commission, in, Molasses Rates from Mobile, Ala., 28 I. C. C. 666. While the domestic rate exceeded the import rate from domestic points of origin, 16c must be added to the import rate to cover cost of trans-Gulf shipment, making the actual cost to St. Louis 31c. Much Cuban blackstrap is consumed locally in Louisiana, but it is shipped in under a 6c local rate. The selling price ranges from 4¾c to 6c per gallon. Milling-in-transit privilege is accorded at New Orleans under the through rate. Rates had been gradually advanced to the 21c basis with the gradual removal of water competition. The rate on beet blackstrap from Bay City, Mich., to East St. Louis, Ill., 600 miles, was 12c as compared with the import rate of 15c for the 700 miles from New Orleans to St. Louis. Blackstrap loaded 90,000 lbs. to the tank car, for the use of which the carrier paid the owner ¾c per mile for loaded and empty mileage, and 90 per cent of the cars were returned empty. The carrier also paid on imported shipments a switching charge of 1c at New Orleans and a bridge arbitrary of 2c at St. Louis. The 15c rate on imported blackstrap applied only where the agreed value was 8c or less per gallon, the unconditional rate being 21c. The risk of loss or damage in tank car shipments was so small as to be negligible. HELD, that any greater difference than 3c between import and domestic rates from New Orleans to East St. Louis is unjustly discriminatory against the domestic product, and the difference between the unconditional and the special rate on imported blackstrap is unreasonable to the extent that it exceeded 2c. If imported blackstrap be given a special rate based on agreed value, domestic blackstrap is

equally entitled to such a special rate. Louisiana Sugar Planters' Asso. v. I. C. R. R., 31 I. C. C. 311.

(e) Complainant attacked the rate of 45c, yielding 16.4 mills per ton-mile for 551 miles, imposed on canned goods in carloads from Galveston, Tex., to Oklahoma City, Okla., as unreasonable and discriminatory compared with the Texas intrastate rate quoted by carriers from Galveston to certain north Texas points, and from New Orleans to points competing with Oklahoma City. The 30c rate from Galveston to average north Texas points yielded an average per ton-mile revenue of 13.8 mills for average distances of 431 miles. Northbound from Galveston to Oklahoma City the rate was 15c higher than north Texas points, while the southbound rate from St. Louis to north Texas points was but 5c over the St. Louis-Oklahoma rate. Rates from New Orleans to Oklahoma City, Muskogee, Okla., Kansas City, Mo., and Fort Smith, Ark., were 45c, 44c, 38c and 33c, yielding 16.3, 13.9, 8.8 and 11.6 mills per ton-mile for distances of 551, 635, 867 and 571 miles. St. Louis, Mo., to McAlester, Okla., the rate was 39c for 566 miles. The effect of the Texas state scale used by the carriers was to limit Oklahoma City jobbers to territory within a radius of 50 miles, beyond which they were unable to compete with the Texas jobbers. HELD, that the rate in question from Galveston to Oklahoma City was unlawfully discriminatory to the extent that it exceeded by more than 10c the rate from Galveston to Gainesville and Denison, Tex. Carroll, Brough & Robinson v. A. T. & S. F. Ry. Co., 31 I. C. C. 466.

(f) The imposition of higher rates on interstate than on state traffic between the same points, in the same direction, over the same rails, subjects the interstate traffic to unjust discrimination in violation of the Act. Whether such interstate traffic is large or small in extent is immaterial, as in either event it is entitled to the full protection of the law. Class Rates between Stations in Louisiana, 33 I. C. C. 302, 304.

(g) Charlotte, N. C., not found to be subjected to undue prejudice and disadvantage by reason of higher interstate scale of rates on cottonseed from points in South Carolina than South Carolina intrastate scale. Elba Mfg. Co. v. S. Ry. Co., Unrep. Op. A-830.

§11¼. Two Line Haul.

See Evidence, §59.

(c) Complainant attacked the rates on agricultural implements in carloads from Canton, Ill., to various local points in Kentucky, Tennessee, and Mississippi, on the I. C. R. R. as unreasonable and discriminatory compared with rates from Peoria, Ill. Canton was compelled to pay the combinations of intermediate rates based on East St. Louis; but it appeared that shipments from Canton required a two-line haul between 30 and 35 miles longer than the single line haul from Peoria, with expensive terminal service at East St. Louis and the absorption of a switching charge there imposed, and that Canton was accorded the same treatment as other points in the former Peoria group not reached by the I. C. R. R. HELD that defendants were justified in charging higher rates from Canton than from Peoria, and that the existing disparity was not undue. Question of unreasonableness not decided, owing to readjustment in progress under Fourth Section Order No. 3866. Complaint dismissed. Parlin & Orendorff Co. v. I. C. R. R., 34 I. C. C., 90.

IV. REMOVAL OF DISCRIMINATION.

See Advanced Rates, §5 (1), (c), (d), (e); Basing Points and Lines, §3 (f).

§11½. In General.

(a) If discrimination were removed by extending the rate-breaking system, the final result would be that grain rates would be made on an arbitrary mileage basis, without reduction in the rate per ton mile proportionate to the length of the haul. Such a result may finally be reached in rate making, but the industries and commerce of the country are now established on the present basis, and great commercial hardship would inevitably attend the abandonment of the present system. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 379.

(b) If rate from New York to C. F. A. points is discriminatory as compared with the rate to same points from Detroit, the adjustment may be rectified only by an increase in the Detroit rate or a cut in the rate from New York. Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 45.

(c) Time cannot be permitted to rob a group of communities of their right to relief from what, in view of changed conditions, would be a manifest discrimination if further continued. Mississippi River Case, 28 I. C. C. 47, 55.

(d) An adjustment which satisfies a complaint, but shifts burden to other localities or persons, not just. Colorado Mfrs.' Asso. v. A. T. & S. F. Ry. Co., 28 I. C. C. 82, 88.

(e) A practice that is bad only because discriminatory can always be remedied by withdrawing the benefit from the favored party or by extending it to the injured parties. In re Mileage Books, 28 I. C. C. 318, 324.

§12. Reduction of Rates.

See Discrimination, §4 (v).

(a) If it be affirmatively shown that a particular rate is unjust and unreasonable, the fact that other rates adjusted in relation thereto may be affected, is no reason for refraining from reducing the rate assailed; but where for a long period of time rates have been the same, and no complaint has been made with reference thereto, the presumption obtains that they are reasonable. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 437.

(b) A lower rate accorded a competing city for a shorter haul, forced by competition with a rival carrier having the short haul, is not sufficient reason for a reduction in rates. Cement Rates to Stations on the M. C. R. R., 32 I. C. C. 540, 541.

(c) In removing unlawful discrimination arising from the relation of intrastate to interstate rates, Commission is not bound to reduce the latter below what is found to be a proper standard. Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 542, 543.

(d) A disparity between two rates can as logically be removed by a reduction of the higher rate as by an increase in the lower. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 259.

§13. Disturbance of Settled Adjustment.

See Evidence, §66; Relative Rates.

(a) The fact that another complaint might possibly arise out of the general situation is not a controlling factor in determination of that question, as cases of alleged undue preference or prejudice must be adjudged upon their respective merits. Chicago Switching Charges, 28 I. C. C. 677, 678.

(b) Complainant asked that certain rate-making methods relative to grain and grain products followed by carriers at Kansas City, Mo., be extended to Wichita, Kan., on the ground that such practices were unduly discriminatory as against Wichita. Kansas City is a breaking point for rates on grain moving from the West to the East and South. Grain dealers there may ship from the West and reship to points east and south at a total transportation expense no greater than the rate from interior points of origin to point of destination. In making outbound shipments the Kansas City dealer has his choice of all routes, irrespective of whether or not the grain reached him by lines having rails beyond. At points west, including Wichita, no such "reshipping" rates are provided, and grain dealers at such points must pay sums of local rates greater than through rates from origin to destination, unless provision is made by them according to "transit" for the reduction of rates in or out, or both. Wichita has the transit system on liberal and extensive lines, but transit is less desirable than the breaking of rates, and it asks that it be given the rate-breaking system and placed on an equality with Kansas City. Wichita is an important and growing grain market; of the 60,000 carloads of grain shipped from Kansas yearly, one-fourth being merchandized or milled at Wichita. But a finding that the discrimination between Wichita and Kansas City is undue and on order that it be removed would result in one of two things; either (1) the extension of the rate-breaking system to every other market between the grain fields and the points of final consumption, or (2) the abandonment of the rate-breaking system at Kansas City. HELD, that the Commission is not at this time prepared to make an order disturbing such existing rate adjustments. Complaint dismissed. Wichita Board of Trade v. A. T. & S. F. Ry. Co., 29 I. C. C. 376.

(c) Complainant attacked the class rates from Houston, Tex., to Arkansas, as unreasonable and unjustly preferential to St. Louis, Mo., Kansas City, Mo., and New Orleans, La. Houston is in a large group, known as Texas common points, including substantially the

eastern third of the state. Texas common points take the same rates from, and are grouped on traffic to, the major portion of the United States. Rates from and to many points or groups are made the same as, or with relation to, St. Louis. Arkansas, for instance, is divided into three parts, the northern part taking St. Louis rates, the eastern part Memphis rates, which are somewhat lower than the St. Louis rates (10c first class, for instance) and the Little Rock-Ft. Smith group, which is bounded by the line of the St. L. I. M. & S. Ry. from Ft. Smith to Little Rock, and the lines of the St. L. S. W. Ry. from Little Rock to Pine Bluff and thence to Texarkana. This group takes rates lower than St. Louis by differentials beginning at 23c first class. Of the eight points cited by complainant, six, Little Rock, Ft. Smith, Pine Bluff, Stamps, Camden and Benton, are in the last named group, and the class rates from Houston are as follows:

1	2	3	4	5	A	B	C	D	E
124	105	86	83	65	67	60	49	38	31

The short line distance to these points from Houston range from 300 to 500 miles, with an average of a little more than 400. The other two points, Brinkley and Newport, 485 and 532 miles distant, respectively, are in the Memphis group, and the class rates from Houston are as follows:

1	2	3	4	5	A	B	C	D	E
137	115	96	89	70	72	65	53	41	34

No evidence was submitted of the unreasonableness of the rates in question in themselves. The class rates between St. Louis and the Texas common points were approved by the Commission in R. R. Co. of Texas v. A. T. & S. F. Ry. Co., 20 I. C. C. 463. Rates from St. Louis and other Mississippi River crossings to Arkansas points were made, it appeared, under conditions of active competition, not only between rail carriers, but also between rail and water carriers. Rates from New Orleans to Arkansas points were made to meet not only water competition, but also competition with St. Louis. The effect of the order desired by complainant would be either a general reduction in the rates from the Texas common points to Arkansas or the destruction of the common point group to that state at least and the establishment of rates on a mileage basis. HELD, to justify such an order, it should be shown, not only that the conditions of transportation from Houston and from the points alleged to be unduly preferred are substantially similar, but also that the present adjustment results in undue prejudice and disadvantage to Houston and its shippers. Since the conditions of transportation from the respective points of shipment were not similar, and in the absence of proof that the rates in question themselves were unreasonable, the complaint must be dismissed. Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co., 32 I. C. C. 203.

V. PROCEDURE AND EVIDENCE.

See Procedure Before Commission, §2 (a), (n).

§13½. In General.

(a) Where a carrier was summoned to answer and defend a charge that a rate complained of was a rate on cement between Evansville, Pa., and Jersey City, N. J., between which points group rates applied and it was aware that in a preceding report, the commission had held that Jersey City had been discriminated against, the carrier was amply afforded an opportunity to defend all that was charged against it without formal order made. P. & R. Ry. Co. v. U. S., 219 Fed. 989, 993.

(b) Conceding reasonableness of rate for cotton as ordinarily baled, complainants may be barred from alleging discrimination against round-bale cotton carried at same rate. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

§14. Burden of Proof.

See Burden of Proof.

(a) In cases involving the relationship of rates between points in one group, as compared with rates from nearby points in another group taking lower rates, the question whether, under the circumstances of such an adjustment, the discrimination or preference is undue, is one of fact to be determined from all the circumstances of the particular case. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 81.

(b) Transportation conditions under which rates compared established must be shown to be substantially similar. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 251.

(c) It is not sufficient to consider rates to an intermediate market, nor

alone rates from such market, if the question of discrimination between such markets is to be determined. Board of Trade of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C. 297.

§15. Showing of Damage.

See Reparation, §10½.

(a) Mere proof of specific shipments made and the freight paid and the amount for which reparation is sought does not make out a prima facie case when a discrimination in rate or service is the basis of the complaint. Presumption of damage will not be inferred, but proof must be made of such evidentiary facts as would be required to sustain a recovery before a court of law. Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98, 102.

(b) In order to recover under the Act on account of discrimination, a party must show not merely the wrong of a carrier, but that that wrong has operated to its injury. Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98, 102.

(c) The fact that a city pays different rates on shipments of two commodities to a second city, whereas no difference in charge on the two is made from competing points to such second city, is not of itself evidence of discrimination against the first city. Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 549.

(d) Mere fact that seller may have added to price the amount of prospective freight charges based on existing rate does not show that buyer was damaged to extent that rate was unreasonable. Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 289, 293.

(e) In a discrimination case damage must be proven, and evidence that complainant paid charges which are discriminatory is of itself not sufficient to warrant a finding of damage. Greenbaum Co. v. L. & N. R. R. Co., 31 I. C. C. 699, 711.

(f) Complainant must prove actual damage and amount thereof. Spiegle v. S. Ry. Co., 32 I. C. C. 687, 689.

(g) Before award of reparation can be made on account of undue discrimination or preference on the part of carrier's subject to the act, the complainant must prove that he was actually damaged by reason of such discrimination and, furthermore, must prove the amount of damages. Mere proof of particular shipments made and of freight paid does not make out a prima facie case. Complainant must establish the fact and amount of damage. Spiegle v. S. Ry. Co., 32 I. C. C., 687, 689.

§16. Actions in State Courts.

See Actions at Law; Courts, §11.

(a) In spite of the Interstate Commerce Act, state courts retained their common-law jurisdiction and hence have jurisdiction of an action against the carrier for discrimination in facilities. L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky., 1914), 170 S. W. 633, 641.

(b) A shipper can recover common-law damages against a carrier for injury to its business and credit caused by the carrier in delaying its shipments, exacting unreasonable rates from it and discriminating against it with its facilities. L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky. 1914), 170 S. W., 633, 642.

§17. Reparation.

See Reparation.

(a) Reparation may properly be awarded where a discriminatory freight rate has been exacted, but it does not necessarily follow that because a rate is found to be unjustly discriminatory and unduly prejudicial that the complaining parties are the ones who have been damaged through its execution. Curry & Whyte Co. v. D. & I. R. Ry. Co., 30 I. C. C. 1, 14.

(b) In order to recover under the Act on account of discrimination, a party must show not merely the wrong of a carrier but that that wrong has operated to its injury. Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98, 102.

(c) A shipper can recover common-law damages against a carrier for injury to its business and credit caused by the carrier in delaying its shipments, exacting unreasonable rates from it, and discriminating against it in the use of its facilities. L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky., 1914), 170 S. W., 633, 642.

(d) A shipper can recover general damages caused its business through discrimination and facilities by a railroad although it has pending an action before the Interstate Commerce Com-

mission and state courts for reparation for overcharges and unreasonableness of published rates. L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky., 1914), 170 S. W. 633, 640.

(e) A shipper can recover general damages caused its business through discrimination in facilities by a railroad, although it has pending an action before the Interstate Commerce Commission and state courts for reparation for overcharges and unreasonableness of published rates. L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky. 1914), 170 S. W. 633, 640.

§18. Complaint.

See Procedure Before Commission, II.

(a) Where an increase in rates may operate to create or increase a discrimination it is not always necessary to inquire in passing upon the propriety of the increase whether the discrimination be undue; but where the relation has not been changed and where the discrimination, if one previously existed, has not been intensified, that question does not properly arise upon the justification of the increase. The party claiming to rest under such discrimination should file his complaint in due form, thereby bringing to the attention of interested carriers and other parties the exact question for consideration. Grain Rates in Central Freight Association Territory, 28 I. C. C. 549, 557.

(b) With the contention that an issue of discrimination in the sense of preference and prejudice under section 3 of the act cannot be considered in a proceeding relating to a rate increased since 1910, the Commission is unable to agree. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 419.

(c) When the question of freight rates enters into the competition of cities and towns in any respect whatsoever, whether that competition is one for trade, factories or people, complaints, alleging unjust discrimination will be entertained by Commission. Transcontinental Commodity Rates, 32 I. C. C., 449, 454.

DISTANCE RATES.

I. ESTABLISHMENT.
§1. In general.
§2. In effect.
II. REASONABLENESS.
§3. In general.

CROSS REFERENCES

See Basing Points and Lines, §2 (h); Blanket Rates, §12 (d); Claims, §2 (d); Class Rates, §2 (d); Classification, §17 (ii); Discrimination, §11½ (a); Evidence, §20; Reasonableness of Rates, §10.

I. ESTABLISHMENT.

§1. In General.

(a) Neither to Carolina nor to Southeastern territory are rates made primarily upon considerations of mileage, but chiefly in view of competitive forces focused at certain points where the paths of commerce and the routes of transportation meet. Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 344.

(b) Establishment of rates on mileage basis instead of group adjustment may not be warranted by commercial conditions. Arizona Corporation Commission v. A. T. & S. F. Ry. Co., 28 I. C. C. 428, 430.

(c) Making rates on an arbitrary mileage system may finally be reached, but the industries and commerce of the country are now established on a different basis, and the Commission at this time declines to undertake such a revolution. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 379, 380.

(d) Complaint attacked the rates on commercial fertilizer in carloads from Norfolk, Va., to central and eastern North Carolina points, as unreasonable and discriminatory compared with rates from Wilmington, N. C., to the same destinations. Rates from Norfolk applied generally from Virginia cities, differences in distance being reflected in the rates only where material. Between Norfolk and Charleston, S. C., Fayetteville was the rate-meeting point, the rate from Norfolk, 206 miles, being $3 per ton, and that from Charleston, 184 miles, being the same. On the S. A. L. the rate was $2.83 from Norfolk to Raleigh, for 174 miles; and $2.40 from Wilmington to Raleigh, via the A. C. L. & S. Ry. for 133 miles. Although to many points on the A. C. L. the rates from Wilmington were lower than those from Norfolk, Norfolk shipped considerably more fertilizer to stations on that line in North

Carolina than was shipped from Wilmington. Rates to stations in the vicinity of Washington and Plymouth, N. C., were particularly low, owing to water competition. While an ordinary box car would accommodate thirty tons of fertilizer, carriers had voluntarily extended to interstate traffic the North Carolina minimum of ten tons. But on the S. A. L. the rate from Norfolk to all stations, Summit to Apex, 92 to 187 miles, was $2.83; and on the A. C. L. the rate to all stations, Scotland Neck to Tillery, 94 to 105 miles, was $2.50. Defendants applied for authority to continue lower rates on fertilizers from Norfolk to Wilmington than to intermediate points. The rate was $2. HELD, that from Norfolk to destinations involved rates on fertilizers should be made on a mileage basis, and a mileage scale accordingly prescribed, ranging from $1.50 for over 30 miles and less than 50 to $3.25 for 350 miles and over 325, the scale increasing 5c every 5 miles up to 120 miles, then 5c for every ten miles up to 250, then 10c for every 25 miles. Application for authority to continue lower rates between Norfolk and Wilmington than to intermediate points denied. Reparation denied. Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458.

(e) Railroads cannot be expected to grade their rates so closely with regard to distance that there will be no inconsistencies. Lumber to Nashville, Tenn., 31 I. C. C. 186, 188.

(f) Distance tariff or table of distances should be filed with Commission. Division sheet should show distance in miles. Tap Line Case, 31 I. C. C. 490, 493.

(g) Rates according to basic mileage scale are applied to intermediate points, except where rates made by combination on some base point would make lower rates than the straight distance scale. Rates on Sugar, 31 I. C. C. 495, 501.

(h) Carriers submitted scales of sugar rates which they desired in lieu of the mileage scale prescribed by the Commission in 31 I. C. C. 495. The existing rates via the L. & N. R. R. from New Orleans to Montgomery and Birmingham, Ala., were 17c; rates proposed, 21½c for distances of 320 and 355 miles. Existing rates via the I. C. R. R. from New Orleans to Jackson and Madison, Miss., and Cairo, Ill., were 15, 22 and 17c; rates proposed, 18, 22 and 18½c. Existing rates to the depressed rate points, Corinth, Miss., Eufaula, Ala., and Knoxville, Tenn., were 25, 23, and 27c; the prescribed mileage rates 20, 20, and 23c for distances of 389, 398, and 601 miles. The proposed rate to Memphis was 13½c via the I. C. R. R. and to intermediate points 25c. HELD, (1) that the Commission had not in its original report contemplated requiring a general reduction in sugar rates, but merely such readjustment as would correct existing disparities; and that, therefore, the original report should be modified to some extent; (2) that the proposed rates to Montgomery and Birmingham be observed as maxima at intermediate points; (3) that the carriers might establish rates not exceeding 21½c to all points not exceeding 360 miles on routes from New Orleans to Ohio and Mississippi River crossings; (4) that rates to points more than 360 miles distant south of the Tennessee state line should not exceed 25c, and to points north of that line, 28c; (5) that the less-than-carload commodity rate to a given point should not exceed the class rate by more than the difference observed at intermediate points. Sugar Rates from New Orleans, 32 I. C. C., 606.

(i) Rates on lumber to Newark, N. J., from points between Chattanooga and Nashville, Tenn., between Huntsville, Ala., and Nashville, applying via Nashville, should not exceed the rates from the nearest one of the basing points by more than ½ cent per 100 pounds for each 10 miles or fraction thereof. Atha Tool Co. by N. C. & St. L. Ry Co., Unrep. Op. A-919.

§2. In Effect.

(a) Reparation awarded on oak logs from Birmingham, Ala., to Chattanooga, Tenn., on basis of mileage scale prescribed by Commission; carrier having sought to cancel specific commodity rates applicable from junction points making effective higher scale of mileage rates. McLean Lumber Co. v. A. G. S. R. R. Co., Unrep. Op. A-771.

II. REASONABLENESS.

See Reasonableness of Rates.

§3. In General.

(a) Application of interstate distance tariff on grain, instead of Iowa distance tariff, not justified. Iowa Grain Rates, 28 I. C. C. 354.

(b) Fundamental maxim that rate per ton-mile shall decrease as distance in creases; but to disregard rule is not of necessity a discrimination. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232.

(c) In any situation affecting groups of points subject to the same general basis or scale of rates, the Commission may properly, and will, inquire into the conditions presented at one or more of the specific points, whether typical or otherwise, but it must at the same time look to the entire rate structure and, where a distance scale applies, both the extreme and the mean distances and rates must be considered. Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 608.

(d) The Commission considered a rehearing of the original report, 30 I. C. C. 1, wherein it was found that rates on pulp wood in carloads from Minnesota points of origin to Duluth, applied as parts of through rates for through transportation to Wisconsin and Michigan destinations, were not unreasonable and that they were not fairly measurable by the rates on saw logs from the same points of origin to Duluth. The only attack upon the portions of the through rates south of Duluth was with respect to the difference of 1.5c in the charges from Duluth and from Superior. It appeared that as to practically all traffic other than pulp wood equal rates prevailed from the two gateways. This situation was held to subject pulp wood traffic and the shippers thereof to undue prejudice and disadvantage and the carriers were ordered to remove the discrimination. Upon petition of defendants operating from Duluth and from Superior the order was rescinded and the cases opened for rehearing. Amended petition was filed by complainants specifically alleging undue prejudice and disadvantage in the exaction of higher charges from Duluth than from Superior and renewing in greater detail the previous allegations concerning the factors of the rates up to Duluth. As a result of the rehearing it was stipulated by the parties that rates from Duluth ought properly to be somewhat higher than from Superior and that a reasonable difference would be ¾c per 100 lbs. Accordingly order was entered July 6, 1914, dismissing those portions of the complaints which alleged undue prejudice and disadvantage in the rates from Duluth and from Superior applied as parts of the through rates, leaving for further consideration only the portions of the rates applying from Minnesota points of origin to Duluth. In the original cases the complaints referred to these rates as unreasonable and discriminatory by comparison with rates on other forest products. Although mining timber rates were mentioned, the evidence dealt mainly with the rates on and transportation conditions surrounding the movement of saw logs, it being apparently the aim of complainants to bring about the same rates on pulp wood as on saw logs. It is now contended that even if the facts are found to justify higher rates on pulp wood than on saw logs, no such justification has been shown with respect to mining timbers. HELD, that the conclusions reached in the original report with respect to the factors of the rates up to Duluth applied as parts of the through rates were correct, and the distance scale prescribed in Pulp & Paper Mfrs. Traffic Ass'n v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, applicable from points of origin in Minnesota to Duluth as parts of through rates on interstate shipments, adhered to. Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C. 162.

(e) The Commission considered a petition for modification of its order in 28 I. C. C. 563, prescribing a mileage scale in conformity to which rates were to be established from interior Iowa points to certain destinations in Kansas on and north of the main line of the A. T. & S. F. Ry. The scale resulted in rates from Council Bluffs and other specified points in western Iowa lower than rates from Omaha and other Missouri River points to the same destinations, which rates had been declared reasonable in State of Kansas case, 27 I. C. C. 673. HELD, that to remedy the deviation from the fourth section indicated the former order should be modified so as to authorize the establishment between the points in question of rates not less than those effective before the issuance of such order. Iowa State Bd. of R. R. Comm'rs v. A. E. R. R., 34 I. C. C. 379.

DIVERSION

See Reconsignment.

DIVISIONS.

I. CONTROL AND REGULATION.

§1. Judisdiction of Commission.

II. PUBLICATION AND TARIFFS.
§2. Obligation to file.
III. AGREEMENTS FOR DIVISIONS.
§3. Computation.
§4. Inability to agree.
§5. Reductions.
§6. Right to divisions.
§7. As evidence.
IV. LEGALITY.
V. REASONABLENESS.

CROSS REFERENCES

See Absorption of Charges, §5 (d); Allowances; Basing Points and Lines, §1 (e), §2 (cc); Reasonableness of Rates §7½ (x), §10½; Reparation, §16 (w), (x); Tap Lines, §6½; Through Routes and Joint Rates, §14; Water Carriers, §6 (o).

I. CONTROL AND REGULATION.

See Control and Regulations.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) The Commission cannot deny a carrier a reasonable division out of joint rates because of past or present derelictions, or even the fear of further violations of the law. L. & P. Ry. Co. v. United States, 209 Fed. 244, 254.

(b) Division of rates may be prescribed by order of Commission. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 103.

(c) The establishment of divisions is a continuing power, supplemental to the establishment of joint rates, and dependent upon carriers' failure to agree upon the proportions thereof to be received by each. Rates on Lumber and Other Forest Products, 30 I. C. C. 371, 373.

(d) If carriers are unable to agree concerning divisions, they may submit the matter to the Commission. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 392; Wichita Business Asso. v. K. C. M. & O. Ry. Co., 29 I. C. C. 669, 670.

(e) Divisions to industrial roads performing a plant facility or shipper's service held to constitute an undue preference to the favored industries and subject other industries to an undue prejudice. Industrial Railways Case, 29 I. C. C. 212.

(f) Shipper has no interest in question of divisions. Wichita Business Asso. v. K. C. M. & O. Ry. Co., 29 I. C. C. 669, 670.

(g) The law prescribes no basis upon which the Commission's findings shall rest when, in the event of the contingencies provided for in the act, the duty of fixing the divisions falls upon it. People's Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657, 661.

(h) The Commission exercise a continuing power, supplemental to establishment of joint rates and dependent upon carrier's failure to agree upon proportion to be received by each. Rates on Lumber and Other Forest Products, 31 I. C. C. 673, 764.

(i) In no event can the Commission prescribe the divisions of a joint through rate until it has been fixed in amount and the carriers have failed to agree upon the divisions thereof. Kansas City Missouri River Nav. Co. v. C. & A. Ry., 34 I. C. C., 67, 72.

(j) If not asked by carriers to fix divisions, Commission may institute inquiry upon its own motion. Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C., 100, 104.

(k) Supreme court held that if divisions of joint rates are such as amount to rebates or discriminations in favor of tap lines, it is within province of Commission to reduce same. Industrial Railways Case, 32 I. C. C., 129, 131, 132.

III. AGREEMENTS FOR DIVISIONS.

§2½. In General.

(a) The division of a joint rate between carriers is a matter of agreement between the participating carriers in the first place. The law prescribes no basis upon which the Commission's findings shall rest when, in the event of the contingencies provided for in the Act, the duty of fixing the divisions falls upon it. People's Fuel & Supply Co. v. G. F. W. Ry. Co., 30 I. C. C. 657, 661.

§3. Computation.

(a) Although through charges based on sum of intermediate rates, earnings on traffic are not divided east and west of river on any such basis. Interior Iowa Cities Case, 28 I. C. C. 64, 68.

(b) Generally true that a carrier may reasonably accept less than its local rate as its division of a joint rate. Sandstone, Minn.-Missouri River Building Stone Rates, 28 I. C. C. 269, 273.

(c) In establishing equitable divisions it is necessary to have regard for all the surrounding circumstances and conditions. Rates on Lumber and Other Forest Products, 31 I. C. C. 673, 676.

(d) Division of rates shall not be more than is just and reasonable for the service performed. Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 105.

§4. Inability to Agree.

See Advanced Rates, §7 (6); Switch Tracks and Switching, §4 (p); Through Routes and Joint Rates, §5, §16 (b), §24 (q).

(a) Protestants, in 30 I. C. C. 371, objected to proposed increases in the rates on lumber and other forest products from Arkansas and other states to points in Iowa, Minnesota and other states. It appearing that the question was merely one of divisions between the interested carriers, the Commission merely denied the suspended rates and directed the carriers to agree upon proportions. Failing to agree, the matter was again brought before the Commission. Prior to the acquisition by the St. L. S. W. Ry. of trackage rights over the St. L. I. M. & S. Ry. from Thebes, Ill., to East St. Louis, Ill., the St. L. S. W. Ry. received 16c on the haul to Cairo, and the lines beyond, 3c for the haul thence to East St. Louis. After such acquisition the St. L. S. W. Ry. demanded 19c for the haul to East St. Louis. The northern lines contended that divisions should be computed with respect to earnings of the lines to and from the points of interchange. Formerly a three-line haul was involved, necessitating switching at Cairo and absorption of cost by the intermediate line. This had been eliminated by the acquisition of the defined trackage rights. All other lines hauling lumber from the Southwest to East St. Louis receive from northern connections a division of but 18c. HELD, that as to the St. L. S. W. Ry. the rates should divide 18c to East St. Louis and the balance to the lines beyond; but with respect to the rate from points on the St. L. S. W. Ry. to Des Moines, Iowa, via the Wabash R. R., the division should be 16.5c to the St. L. S. W. Ry. and 8.5c to the Wabash R. R. Rates on Lumber and Other Forest Products, 31 I. C. C. 673.

(b) In compliance with the decision in 27 I. C. C. 24, the M. St. P. & S. Ste. M. Ry. and the G. T. W. Ry. established a joint rate of 3c per 100 lbs. plus $2.50 per car for the transportation of ice from Silver Lake, Wis., to Chicago, Ill The carriers being unable to agree upon the division of the rate, the former line prayed for a determination of the matter by the Commission in accordance with section 15 of the Act, contending that it had a right to except certain commodities from the Lowery tariff, regulating switching charges in the Chicago district, and that the burden was upon the G. T. W. Ry. to show the reasonable value of its switching service. Under the Lowery tariff the latter was entitled to charge 1c per 100 lbs., minimum $6 per car, for the service. In 1913 the M. St. P. & S. Ste. M. R. R. handled 13,431 cars of ice into Chicago, of which but 2,859 cars were delivered on its own tracks, the remainder being delivered upon the tracks of its connections. On shipments from the same point of origin the C. & N. W. R. R. pays connecting lines the established reciprocal switching charge, as does the C. M. & St. P. R. R. on shipments from all its Wisconsin stations and the G. T. W. R. R. on shipments from Indiana points. HELD, that the G. T. W. Ry. should not be required to perform the service in question for the M. St. P. & S. Ste. M. Ry. at any less charge than it receives from other carriers for like service. People's Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657.

(c) Where an existing rate is just and reasonable, a disagreement amongst carriers as to divisions ought not to impose upon shippers an increased burden. If carriers are unable to agree upon divisions, they can of course bring that phase of the matter to the attention of the Commission. Transit Regulations on Grain and Dried Beans, 32 I. C. C. 38, 40.

(d) In the event of the failure of the trunk lines and the terminal road to establish as between them divisions of the joint through rates; and upon proper cause appearing, the Commission may upon its own motion institute an inquiry into the matter of these divisions, under the provisions of the act relative to giving rebates, having in mind the common ownership of the stock of the brewery company, a shipper, and that of the terminal road. Mfs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104.

(e) The commercial needs of ship-

pers are not to be made the measure of reasonable compensation for carriers, but the rights of communities and shippers served by the carriers are not to be disregarded when the carriers are unable to agree as to the performance of the service or the division of the compensation. Grain Rates from Milwaukee, 33 I. C. C., 417, 425.

(f) Disagreement among carriers in respect to divisions ought not to impose upon shippers an increased burden. Transit Regulations on Grain and Dried Beans, 32 I. C. C. 38, 40.

(g) Connecting carriers at East St. Louis, Ill., demanded an increased division. Withdrawal of through rates via that gateway justified. Routing of Bauxite Ore to Chicago Heights, Ill., Unrep. Op. A-842.

(h) On carload of lumber from Burton, La., to Waltham, Mass., reconsigned at Jewett, Ill., connecting carrier refused to consent to application of joint through rate of 39 cents because its division would be less, and combination rate of 45 cents was charged. Held, unreasonable and reparation awarded. Fillerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-895.

(i) Cancellation of joint through rates on lumber, ties, and other forest products from points in Louisiana to points in Texas, due to carrier's inability to agree as to divisions, not justified. Rates on Lumber from Points in Louisiana to Points in Texas, Unrep. Op. A-947.

§6. Right to Divisions.

See Tap Lines, §9.

(a) Line performing terminal service entitled to greater division than line relieved of such service. Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 631.

§7. As Evidence.

See Blanket Rates, §13 (b).

(a) Shipper pays for complete service, and has no concern as to how through charges are divided among carriers. Interior Iowa Cities Case, 28 I. C. C. 64, 73.

(b) That divisions of through rate must be made with one and sometimes two additional lines justifies higher rates from Alton than East St. Louis to Henderson and Owensboro, Ky. Alton Board of Trade v. C. & A. R. R. Co., 28 I. C. C. 589, 592.

(c) Lines from New Orleans to St. Louis shrink their divisions for benefit of lines west of New Orleans. Molasses Rates from Mobile, 28 I. C. C. 666, 671.

(d) Divisions are matters of agreement between participating carriers, and, while they may be considered as evidence, they are not regarded as conclusive, and ordinarily afford but little basis upon which to determine the reasonableness of point rates. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 579.

(e) Divisions afford but little basis upon which to determine reasonableness of joint rates. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 578, 579.

(f) It can not be concluded that a rate is unreasonable solely because one of carriers participating therein receives an apparently excessive division of that rate. Commodity Rates to Pacific Coast Terminals, 32 I. C. C., 611, 625.

(g) Rates on paper bags from Hudson Falls and Ballston Spa, N. Y., to New Orleans, La., and Mobile, Ala., not found unreasonable. Commission has frequently held that a shipper whose through rate is reasonable and non-discriminatory cannot complain of the divisions thereof. Union Bag & Paper Co. v. D. & H. Co., Unrep. Op. A-814.

(h) Testimony to the effect that the earnings of carrier under divisions received are not remunerative does not meet the burden imposed by the statute upon carriers to justify higher charges. Illinois-Minnesota Coal Rates, Unrep. Op. A-962.

IV. LEGALITY.

See Allowances, §9 (j).

(a) When the charges are reasonable the division of the rate between the carriers participating in the service is not usually of special interest to the public, although in some cases the divisions may have controlling significance. Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502.

(b) Question of divisions is quite apart from that of the reasonableness of a joint rate. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 255.

(c) Generally true that a carrier may reasonably accept less than its local rate as its division of a joint rate. Sandstone,

Minn.,-Missouri River Building Stone Rates, 28 I. C. C. 269, 273.

V. REASONABLENESS.

(a) On lumber received at Nitram, La., from Fullerton, La., for coastwise shipment from Texas City, Tex., the division of rate yields the carriers from Nitram 8 cents; for similar coastwise shipment of lumber from any other point to Nitram, the rate is 7 cents. HELD, unreasonable and reparation awarded. Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

(b) The fact that a certain carrier is willing to accept a certain amount of its share of the through rate does not establish that as a measure of what would be a reasonable proportion to that road, though it is persuasive that its proportion should at least be no higher. Rates on Lumber and Other Forest Products, 32 I. C. C. 484. 485.

(c) In the supplementary report rendered in 31 I. C. C. 673, respecting divisions between petitioning carriers and the roads north of St. Louis and East St. Louis on lumber from Arkansas and other states to Iowa, Minnesota and other states, the St. L. & S. W. Ry. was granted a division of 18c to East St. Louis. In the case of shipments to Des Moines, under the old rate of 27½c this would yield 65.4 per cent to the St. L. & S. W. Ry. and 34.5 per cent to the Wabash R. R. These percentages applied to the reduced rate of 25c would give a division of 16.5c and 8.5c. HELD, that the rate to Des Moines should divide, 17¼c to the St. L. & S. W. Ry. and 7¾c to the Wabash R. R. Supplemental order so modified. Rates on Lumber and Other Forest Products, 32 I. C. C., 484.

(d) In case delivery to trunk line involves a haul over two or more tap lines, the divisions herein fixed should be applied to the aggregate haul and not to the separate service of each of the tap lines. Tap Line Case, 31 I. C. C. 490, 493.

(e) Value of terminals and facilities should be considered by connecting lines in fixing divisions. Buffalo, Attica & Arcade R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 585.

(f) Divisions should be computed with respect to earnings of lines to and from points of interchange. Rates on Lumber and Other Forest Products, 31 I. C. C. 673, 675.

DOCK STORAGE

See Demurrage, §3 (a).

DRAYAGE.

See Reparation, §6 (yz); Routing and Misrouting, §5½ (a).

(a) Reparation awarded on account of drayage charges incurred because of defendants inability, by reason of a strike, to transport from Jersey City, N. J., to New York City, certain shipments of peaches and cantaloupes, from Georgia and North and South Carolina to New York City. National League of Commission Merchants v. P. R. R. Co., Unrep. Op. A313.

(b) Complainant required to pay drayage charges of $17.39 at Chicago, Ill., on account of misrouting of shipment of green coffee from Brooklyn, N. Y. Reparation awarded. Arbuckle Bros. v. Old Dominion S. S. Co., Unrep. Op. A-550.

(c) Reparation awarded for drayage charges on brick at Jacksonville, Fla., caused by reason of terminal company's refusal to switch cars as provided in its tariff. Logan Concrete & Engineering Co. v. G. S. & F. Ry. Co., Unrep. Op. A-624.

(d) Those acting in the capacity of draymen only have no interest in goods transported nor in the payment of transportation charges; and it is by no means clear that such persons have a right under the act to complain on their own account of a preference granted by a carrier to another person or company engaged in a like business. Phila. Team Owners' Pro. Assn. v. Ry. Co., 32 I. C. C. 387, 393.

(e) Drayage charges on coal from Twin Rocks, Pa., to Vineland, N. J., found to have been due to misrouting of shipment by carrier. Reparation awarded. Commercial Coal Mining Co. v. P. R. R. Co., Unrep. Op. A-721.

DRYING IN TRANSIT

See Allowances, §9 (d).

DUMPING AND TRIMMING

See Facilities and Privileges, §6.

DUNNAGE

See Allowances, §8 (2½); Classification, §16 (m); Minimums, §1 (c).

ELECTRIC LINES.

I. CONTROL AND REGULATION.
II. THRU RATES WITH STEAM ROADS.
III. RIGHT TO FUEL RATES.
IV. TRANSFERS AND RATES.
V. FACILITIES.
VI. OPERATION.
VII. REGULATIONS.

CROSS REFERENCES

See Bridge Tolls, I (n); Loss and Damage, §6 (r).

I. CONTROL AND REGULATION.

See Control and Regulation.

(a) The Commission considered the propriety of requiring interstate electric railway companies to state in their monthly reports of accidents returns covering their entire operations, whether in strictly city service or otherwise, and also the general question of the Commission's power over electric railways as distinguished from steam roads. HELD, (1) that electric railways, other than street passenger railways, participating in interstate movements of persons or property, are subject to the requirements of the Commission relative to filing reports of finances and operations and accidents; and (2) that railway companies which provide both street-car or other intrastate service and interstate service should restrict the scope of their monthly report of accidents so as to include only accidents resulting from the operation of cars engaged in the transportation of passengers and property in interstate commerce. Jurisdiction over Urban Electric Lines, 33 I. C. C., 536.

(b) Electric railways, other than street passenger railways, participating in the interstate movement of persons or property are subject to the requirements of the Commission relative to the filing of reports of finances and operations and accidents. Jurisdiction over Urban Electric Lines, 33 I. C. C., 536, 539.

(c) Railway companies which provide both street-car or other intrastate service and interstate service should restrict the scope of their monthly report of accidents so as to include only accidents resulting from the operations of cars engaged in the transportation of passengers and property in interstate commerce. Jurisdiction over Urban Electric Lines, 33 I. C. C., 536, 539.

(d) The Commission's authority upon a proper showing to require the establishment by steam railroads of through routes and joint rates with interurban electric railroads engaged in interstate transportation of freight has long been settled. It is the needs of the shipping and receiving public that the Act was intended primarily to serve; and if a public necessity therefor is shown, the Commission's right in the case to require the establishment of such routes and rates is clear. The details with respect to equipment and facilities for the interchange of traffic devolve upon the carriers that are parties to the route and rates after they are established. C. O. & P. Ry. v. C. & N. W. Ry., 33 I. C. C. 573, 575.

II. THRU RATES WITH STEAM ROADS.

See Thru Routes and Joint Rates

(a) Complainant, operating an electric railway in Illinois, from Peru to Joliet with branch lines to Streator and Ladd, aggregate length 106 miles, prayed that defendants be required to establish through routes and joint rates with complainant between points on their respective lines. Complainant had joint rates with certain trunk lines, and its rails permitted the movement of the heaviest cars; but it owned no box cars and for about 20 miles of its main line the curves and grades were too severe to permit the movement of carload freight. All important towns on its lines were served by one or more steam railroads, which served all but two of the industries located on its lines. HELD that the establishment of through routes had not been justified, no public necessity therefore being shown. Complaint dismissed. C. O. & P. Ry. v. C. & N. W. Ry., 33 I. C. C. 573.

IV. TRANSFERS AND RATES.

(a) Increases in proportional rate by electric line from $4 to $5 per car on tile, hollow brick, etc., from Wilson to Kerper, Ohio, found to be justified. Proportional Commodity Rates Between Kerper and Wilson, Ohio, Unrep. Op. A-893.

(b) Increased fares for transportation of passengers between Somerset, Md.,

and the District of Columbia not found unreasonable. Passenger Fares between Somerset, Md., and Points in the District of Columbia, Unrep. Op. A-954.

ELEVATION

See Allowances, §8 (3); Facilities and Privileges, §15 (3f).

ELKINS ACT

See Crimes, I.

EMBARGO.

CROSS REFERENCES

See Demurrage, §2 (f), §17 (a); Routing and Misrouting, §7 (e); Track Storage, III (b).

(a) Complainant, an incorporated association of wholesale dealers in hay and straw, protested against the action of defendant in detaining shipments at its New Jersey terminal pending embargoes on its pier 66 and Brooklyn eastern district terminals. The embargo notices, exempted prior billed shipments, and defendant's rules, provided for reconsignment of cars billed to New York Harbor to Long Island and New England points. The pier and the terminal were within free lighterage and floatage limits, and hay consigned to New York Harbor or to Jersey City, lighterage free, could, in the absence of embargo, be forwarded to them without additional expense. Carloads of hay were prior to the entry of the embargo, ordered shipped to members of complainant association at Jersey City for delivery to points within lighterage limits, reaching the New Jersey terminal while the embargo was in force. Defendant notified consignees of the arrival, and was directed to deliver the cars to pier or terminal, but held them during the life of the embargoes, assessing demurrage charges. Copies of embargo notices were not posted at the embargoed terminals. HELD, that the embargoes were not applicable to cars which were waybilled from points of origin prior to the specific dates named in the notices, and that defendant was not justified in holding the cars and collecting demurrage thereon after the dates of receipt of orders for delivery from complainant's members. As, however, the members of complainant association had paid the demurrage and charged it to their shippers, they were not proper parties complainant. The shippers, however, were entitled to a refund without the entry of an order. In cases where it is possible to do so, notices of embargo should be posted at embargoed terminals in advance of the effective date of the embargo. New York Hay Exchange Assn. v. L. V. R. R. Co., 29 I. C. C. 90.

(b) Complainant's contention that the embargo should be substituted for demurrage charges as a check for car detention not sustained. Spring Coal Co. v. N. & W. Ry. Co., Unrep. Op. A536.

(c) A railroad company must have reasonable ground for instituting an embargo, or it is illegal. The carrier cannot declare an embargo as a shield against its inexcusable fault nor reasonably continue it as such shield. If legal when instituted its continuance is illegal when there is no basis for it other than its own culpable negligence or willful neglect. Berger-Crittenden Co. v. C. M. & St. P. Ry. Co. (Wis., 1915), 150 N. W. 496, 503.

(d) The question as to whether an embargo against freight is founded on reasonable causes is a question of law, but whether the embargo actually exists is a matter of fact for the jury to decide. Berger-Crittenden Co. v. C. M. & St. P. Ry. Co. (Wis., 1915), 150 N. W. 496, 500.

(e) The fact that an initial carrier receives property without notice that the connecting carrier has issued an embargo against a certain commodity which is rendered worthless by a delay in transit does not relieve the connecting carrier from its liability for the wrongful creation of the embargo as to such shipments. Berger-Crittenden Co. v. C. M. & St. P. Ry. Co. (Wis., 1915), 150 N. W. 496, 501.

(f) When a railroad company, from the reasonable necessities of the situation, having regard to self protection and duty to the public, declares an embargo, in form, to continue until further notice, or by custom to so continue, it is up to the shipper and initial carrier by reasonable inquiry to find out whether there has been a change in the situation before sending forward freight. Riddle, Dean & Co. v. Baltimore & Ohio Railroad Co., 1 Interst. Com. R. 701. That would hold good until lapse of such time as to render further continuance of the embargo clearly unreasonable; but would not preclude a carrier, circumstanced as the Alton was in this instance, from, at its own risk of the embargo being actually lifted by the act of the initial carrier, or constructively lifted because of the unreasonable basis

for it no longer existing, in time for the through transit to be completed. Berger-Crittenden Co. v. C. M. & St. P. Ry. Co. (Wis., 1915), 150 N. W. 496, 503.

EMERGENCY RATES

See Evidence, §21½.

EQUALIZATION OF RATES.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CIRCUMSTANCES. AND CONDIDITIONS.
§2. In general.
§3. Commercial advantages and disabilities.
§4. Competition.
(1) In general.
(2) Railroad.
(3) Rail and water.
(4) Water.
§5. Low state rate.
§6. Preference of markets.
§7. Size of community.
III. EFFECT OF EQUALIZATION.
§8. Adjustment of related rates.

CROSS REFERENCES

See Advanced Rates, §5 (2), §13 (c), §17 (kk); Basing Points and Lines, §1 (j); Blanket Rates, §8; Claims, §2 (u); Class Rates, §2 (u); Commodity Rates, §2 (s); Differentials, §6, §7; Discrimination; Evidence, §32 (s).

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) It is not within the power of the Commission to adjust rates merely to equalize market conditions. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 686.

(b) It is no part of the Commission's duty to so adjust rates as to enable an industry to do business at a profit, to equalize market conditions, or to overcome disadvantages not arising from a violation of the statute. Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 612.

(c) The Commission cannct adjust rates or rules so as to equalize geographical or other natural disadvantages of localities. Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 335.

(d) It is not the function of the Commission to equalize fortune, opportunities or abilities. Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265, 269.

(e) Equalizing conditions not the function of the Commission. Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265, 269.

(f) Commission may not adjust rates or rules so as to equalize geographical disadvantages of localities. Michigan Mfrs. Assn. v. P. M. R. R. Co., 31 I. C. C. 329, 335.

II. CIRCUMSTANCES AND CONDIDITIONS.

§2. In General.

(a) Rates to New Mexico destinations should not equalize with Iowa interior points. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 197.

(b) Iowa as a whole not entitled to as low a rate as St. Louis to points in New Mexico. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 198.

(c) A discrimination predicated upon the maintenance of a different basis of rates by one road or set of roads serving two competing points falls within section 3, while an "equalization" between two different coal fields served by different groups of lines does not. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 422.

(d) The Commission considered the proposed substitution of certain rates agreed upon by interested shippers and carriers, in lieu of rates from Toledo, O., to New York, N. Y., and other eastern points, established by the Commission in 27 I. C. C. 536, fixing rates in the ratio of 78 to 60—60 representing the Buffalo rates and 78 the Toledo rates to New York—on ex-lake grain, domestic or export, and on export grain and flour, with the established differentials in the rates to other points. The agreed domestic grain rates from Toledo to New York, Boston, Philadelphia and Baltimore were, local, 15½, 17½, 13½ and 12½c; ex-lake on oats 14, 15½, 12½ and 12c; all lake on other grain, 13½, 15½, 12 and 11c, and the all-rail reshipping rates are 13½, 15½, 11½ and 10½c. Domestic rates on grain

products to the same destination were fixed at: Local products, 16, 18, 14 and 13c; ex-lake on oats products, 14½, 16, 13 and 12½c; ex-lake on other products, 14, 16, 12½ and 11½c, and all-rail reshipping rates of 14, 16, 12 and 11c. HELD, that both parties having reserved the right to subsequently bring the matter to the Commission's attention, in case the proposed rates prove unsatisfactory, present rates may be superseded by those agreed upon. Toledo Produce Exchange v. A. A. R. R. Co., 30 I. C. C. 498.

(e) Complainant attacked (1) defendants' rates on vegetables in carloads from New Orleans, La., to Chicago, Ill., and other northern markets, as unreasonable; (2) minimum weights between the same points, as excessive and unreasonable; (3) commodity rates on vegetables, as unreasonable where higher than class rates; and (4) alleged that the rates assailed were unduly prejudicial as compared with rates to the same destinations from Amesville and Southport Junction, La., and (5) violation of the fourth section. **Reasonableness of Rates:** Rates from New Orleans to Chicago were: For lettuce, 60c per 100 lbs.; beans, 55c; beets, 49.5c; cucumbers, 47c; cabbages, 44c; and potatoes, 40c. The charges would have been much lower had class rates applied. These being forced by water competition did not apply to vegetables, since they, requiring expedited service, could not move by water. The carload minimum was 20,000 lbs. and per car revenue from $80 to $120 for a haul of 912 miles. In Ponchatoula Farmers' Asso. v. I. C. R. R. 19 I. C. C., 513, the following rates on shipments from Ponchatoula, La., 48 miles north of New Orleans, were approved: On lettuce, 58.5c; beans, 52c; beets, 47c; cucumbers, 47c; cabbages, 44c. Rates on lettuce from Mobile, Ala., and Charleston, S. C., to Chicago were 90c and 81c for distances of 827, and 1027 miles. HELD that the carload rates on potatoes, cabbages, cucumbers, beets, beans, and vegetables of the lettuce family were not shown to be unreasonable. **Minimum Weights:** The minimum required for the rates assailed was 20,000 lbs. Though the heaviest loading of straight carloads of lettuce practicable was 17,000 lbs., straight carloads were seldom shipped, and mixtures readily loaded to 20,000 lbs. Defendant's published estimated weights were neither related to actual weights of the commodities nor uniform. Those for different sizes of containers of the same vegetable bore no proper relation, while those on containers of the same size differed from different points of origin and destination. HELD that the scheme maintained was clearly unlawful. **Undue Prejudice and Disadvantage.** The rate on lettuce from Southport Junction, 4 miles from New Orleans, to Kansas City, Mo., was 55c, as compared with 71c from New Orleans; From Southport Junction to Buffalo-Pittsburg teritory, the rates on lettuce, celery, spinach, cucumbers, and beans were 53, 53, 53, 49, and 53c; from New Orleans, 103.5, 103.5, 90.9, 61.2, and 63c; HELD that a greater spread than 5c was unduly prejudicial to New Orleans. New Orleans Shippers' Asso. v. I. C. R. R., 34 I. C. C. 32.

§3. Commercial Advantages and Disabilities.

See Advanced Rates, §5 (2), (a), (c), (r); Blanket Rates, §7; Differentials, §5; Evidence, §2; Reasonableness of Rates, §12½.

(a) Complainants attacked the combination carload rates on pulpwood from northern Minnesota points via Duluth, Minn., to Wisconsin and Michigan pulp and paper mill points as unreasonable and discriminatory compared with rates on similar shipments via Superior, Wis., and prayed the establishment of joint through rates, to be constructed by adding to the saw-log rates to Duluth, the Superior rates from Duluth to destination. This situation was dealt with in Pulp & Paper Mfrs. Traffic Assn. v. C. M. & St. P. Ry., 27 I. C. C. 83, where it was sought to have the Wisconsin distance scale of pulpwood rates applied to hauls of the several carriers in Minnesota as parts of joint interstate rates, whereas in this case the Commission was asked to reduce the Minnesota pulpwood rates to the level of the saw-log rates in effect from Minnesota producing points and be given the Superior rates on the outbound traffic. In the former case a maximum scale of distance rates was prescribed which was subsequently established by carriers serving the Minnesota pulpwood area, to apply proportionally on interstate shipments via Duluth. In February, 1914, the D. & I. R. R. R. and D. M. & N. Ry. and D. W. & P. Ry. established a uniform scale on local intrastate shipments of pulp-

wood, somewhat higher than the proportional scale. At the same time the D. & I. R. Ry. and the D. M. & N. R. R. established a scale on logs beginning with 1c for 5 miles and graded up to 2.9c for 95 miles, and 3.3c for 120 miles. The D. W. & P. Ry. also established a new log scale, beginning with 1c for 5 miles and grading up to 1.95c for 95 miles. The D. & I. R. Ry. previously maintained specific commodity rates on logs, beginning with 1.14c for 12.9 miles, and scaled up to 3.3c for 116.5 miles. Log rates proposed by complainants to apply on pulpwood in so far as the D. W. & P. Ry. is concerned, are pine-log rates made in combination with the D. M. & N. Ry., ranging from 3c for 80 miles to 3.5c for 130 miles. Complainants contended that such proportional rates were higher than existing intrastate log rates, and asked that the latter be substituted, insisting that pulpwood logs, viewed from a transportation standpoint, were no different from other logs. Logs for pulpwood and lumber are cut from the same tracts, the operator cutting everything marketable, reserving sound green timber 4 to 5 in. in diameter at the smaller end for pulpwood, and taking the rest for lumber. The hauling to rail is done at the same time, and both pulpwood and saw logs are loaded from the same spur tracks and at the same loading points. Pulpwood shipping from a tract ceases long before the shipping of other forest products, and to this extent pulpwood stations are less permanent. Saw logs move throughout the year, while the movement of pulpwood logs, though also continuous, is much heavier during January, February and March. Both commodities are loaded and unloaded by the shipper at his own expense, but for saw logs special log cars are required, while for pulpwood any car will do. Saw logs are frequently handled in trainloads, while pulpwood movement is generally by one or a few cars hauled by a local train. Saw-log traffic is of greater density than pulpwood traffic, while on the other hand, pulpwood generally loads heavier than saw logs. Pulpwood is often cut up for lumber, and saw logs are often sent to pulp mills. The two are in active competition, fluctuations of the lumber market being reflected in pulpwood prices. Pulpwood is ordinarily of less value than saw logs. It appeared that the carriers engaged in transporting pulpwood to Duluth had, during the period of 1908 to 1912, paid very high dividends on their stock; but their traffic was for the most part in products other than pulpwood. While the proportional scale prescribed by the Commission in 27 I. C. C. 83 had resulted in a few instances in higher figures than those formerly obtaining, it had on the whole effected a substantial reduction. At the time of the hearing, spruce saw logs were worth on the Duluth market, approximately $16, pine logs $19 to $20, and pulpwood $13 per 1,000 ft., a double cord of pulpwood being equivalent to 1,000 feet. Wisconsin intrastate rates on sawlogs for distances of 50, 100, 150 and 200 miles were via the C. M. & St. P. Ry., 1.8c, 2.5c, 3c, and 3.1c, and via the C. & N. W. Ry., 1.5c, 2.2c, 2.9c, and 3.4c, and on pulpwood, via all lines, 2.25c, 3.05c, 3.55c and 4c. The saw-log scales of the Minnesota carriers had their inception years ago, when vast areas of uncut timber invited the erection of lumber mills, and were originally fixed on a low basis for the benefit of local saw mills, the carriers anticipating additional returns from the transportation of the manufactured products. In 1909 the Minnesota Railroad Commission was petitioned to permit an increase of rates on both sawlogs and pulpwood, and was authorized as to pulpwood, but not saw logs. The situation is the same today; saw logs are shipped to mills within the state, and the carriers afterward transport the finished product to market, whereas the same carriers must deliver pulpwood unchanged to their connections. With the exception of one line, the Minnesota carriers were parties to joint through rates on logs, from points of origin to destinations herein involved, materially higher than the existing through rates on pulpwood. There is strictly a distinction between "pulpwood" and "wood for pulp," the former covering rough spruce, hemlock or fir 8 to 16 ft. in length, while the latter term applies to 2-ft. blocks or sections, peeled, and the knots removed. But, as the Western Classification uses the term, there is no such distinction, in Western Territory the trimming and peeling being done at the pulp mill. Equal rates were applied from Duluth and Superior on all south and eastbound traffic except pulpwood, as to which the rate from Duluth was 1½c higher than that from Superior. Carriers in New England, Canada, Wisconsin, Minnesota and Michigan, and their state commissions have made their rates with substantial

consideration for commercial conditions. These the Commission is asked to ignore and reverse the condition in Minnesota, fixed with approval of its commission, despite the fact that the same principle applies in Wisconsin. Duluth and Superior lie opposite each other on Lake Superior, are connected by three railroad bridges, and approximately two to twelve miles apart, according to carriers and interchange points. HELD, that the saw-log rates to Duluth do not afford a proper standard by which to test the rates on pulpwood to that point applied as part of the through charges to Wisconsin and Michigan mills. So long as the present practice is continued of applying on other traffic Superior rates from Duluth to Wisconsin and Michigan destinations, the rates on pulpwood or pulpwood logs from Duluth should not exceed the rates from Superior to the same points. Proof of complainants having paid the freight not being adduced, reparation denied. Curry & Whyte Co. v. D. & I. R. Ry. Co., 30 I. C. C. 1.

(b) Complainant instituted two complaints. In the first, the Western case, it assailed the rates on all classes and commodities from Cincinnati to Atlanta as discriminatory compared with the rates from Cincinnati to Birmingham, Ala.; and in the second, the Eastern case, it attacked the rates from Eastern ports and interior points to Atlanta as unreasonable and discriminatory in favor of Tennessee points. The Western Case.—In this case, Birmingham had the advantage of Atlanta on the numbered classes, in differentials ranging from 5c to 10c. Class A was 4c lower to Atlanta than to Birmingham, classes E and H were 5c higher to Atlanta, and the other lettered classes were the same to both destinations. The short line from Cincinnati to Atlanta and Birmingham was 336 miles, over the Cincinnati Southern Ry. to Chattanooga, thence 138 miles over the W. & A. Ry. to Atlanta, and 145 miles over the Alabama Gt. So. Ry. to Birmingham. The Cincinnati Southern and A. G. S. Rys. are both parts of the Queen & Crescent System, while the W. & A. Ry. was leased and operated as a division of the N. C. & St. L. R. R. The complaint for the establishment of Cincinnati-Atlanta rates on a substantial parity with Cincinnati-Birmingham rates was based largely on relative mileage, the short line mileage to Atlanta being slightly less than that to Birmingham, and circumstances attending transportation to Atlanta being similar to or more favorable than those attending transportation to Birmingham. Rates from Cincinnati to Atlanta were 98c, 87c, 78c, 63c, 52c, 41c, 28c, 36c, 28c, 24c, 48c, 48c and 48c, on classes 1 to F, and to Birmingham 89c, 79c, 68c, 55c, 47c, 36c, 32c, 36c, 28c, 24c, 43c, 43c, 48c. Atlanta excels Birmingham in population, wealth, and manufacturing operations, and as a banking, jobbing and railroad center. There being no joint through rates from points north of the Ohio River to Atlanta and Birmingham, the latter, by reason of its lower scale of rates from the river, had the advantage of Atlanta on traffic moving from points beyond. Thus, from Detroit via Cincinnati to Atlanta, the first-class combination was 38½c plus 98c; to Birmingham, 38½c plus 89c. On the Louisville combination, Detroit would get a rate of 43c plus 79c, or $1.22, to Birmingham. The various Ohio River crossings were substantially equi-distant from Atlanta, and took the Cincinnati rates, with rates from Memphis and other lower Mississippi River crossings a 4c differential lower. Birmingham was much nearer to the lower river crossings than to Cincinnati; and rates to Birmingham were constructed on the Louisville rates, with Cincinnati certain differentials higher, beginning with 10c on first class; lower Ohio River crossings the same as Louisville, and Memphis and lower Mississippi River crossings 4c lower on all classes. The lower rates to Birmingham resulted from the construction of the Frisco system from Memphis to Birmingham, reducing the haul to 251 miles and the first-class rate to 75c. It appeared that while the returns of the C. N. O. & T. Ry. from Cincinnati to Chattanooga and of the W. & A. Ry. division of the N. C. & St. L. R. R. from Chattanooga to Atlanta were very high, both of these divisions were practically without branches, and the returns on the systems to which they belonged were much lower. The existing rates from Cincinnati to Atlanta were established in 1905, and those to Chattanooga in 1910, to restore in a measure the relationship previously existing between the two points and yielded substantially equal revenues per ton-mile. HELD, that Atlanta has not been unjustly discriminated against, compared with Birmingham, except in the case of shipments through Cincinnati; the distance from the lower

Ohio River crossings was substantially shorter to Birmingham than to Atlanta. The class and commodity rates from Cincinnati to Atlanta should not contemporaneously exceed those in effect from Cincinnati to Birmingham. A revision of the 4c flat differential on traffic from Memphis is suggested, applying a scale similar to that obtaining between Cincinnati and Louisville to the numbered classes. **The Eastern Case.**—The complaint attacked the whole body of rates from Boston, Providence, New York, Philadelphia and Baltimore and interior points, whose rates were based on those ports, to Atlanta, as unreasonable, discriminatory in favor of Chattanooga, Knoxville and Nashville, and in violation of the fourth section, and prayed for the establishment of just and reasonable rates from Eastern ports and interior points to Atlanta and related points, and for the assignment of New York and Philadelphia to the same rate basis as Baltimore. The all-rail first-class rate from these Eastern points to Atlanta was $1.10 to $1.17 per 100 lbs., exceeding the rates to Chattanooga, Knoxville and Nashville by 12c or more, though Nashville was more remote from Eastern points and Chattanooga but 29 miles nearer than Atlanta. The ocean-and-rail rate to Atlanta was $1.05, first-class, from Boston, New York and Philadelphia, and 98c from Baltimore; while to Chattanooga and Knoxville the ocean-and-rail rates were the same as the all-rail rates. It likewise appeared that on traffic moving from interior points basing on Boston, New York, Philadelphia or Baltimore, Atlanta was compelled to pay arbitraries to the ports, in addition to the established ocean-and-rail rates, while for Chattanooga and Knoxville the local rate to the port was absorbed in the ocean-and rail rate. Traffic from the East to Nashville moves under the Official Classification; that to Atlanta, Chattanooga and Knoxville, under Southern Classification. The first-class all-rail rates to these points are, respectively, from Philadelphia 85c, 94c, $1.17, $1.05 and $100; from Baltimore, 83c, 92c, $1.10, 98c and 95c; and from Boston and New York, 91c, $1.00, $1.17, $1.05 and $1.00. The ocean-and-rail rate to Atlanta is $1.05, first class, from Boston, New York and Philadelphia, and 98c from Baltimore. To Chattanooga and Knoxville the ocean-and-rail rates are the same as the all-rail rates. On traffic from interior points basing on the Eastern ports named, Atlanta pays arbitraries to the ports, in addition to the ocean-and-rail rates, while for Chattanooga and Knoxville, the rates named from the ports carry also from the interior points. Traffic moving by ocean and rail to these Southern points is transshipped at Norfolk, Charleston or Savannah, the actual distance from Boston being 593, 973 and 1,057 miles, respectively, while New York, Philadelphia and Baltimore are less distant. In fixing divisions between rail and ocean lines, the distance from Boston to Charleston and Savannah is prorated at 300 miles, and that from the other Northern ports at 250 miles, although theoretically the ocean mileage to the Southern ports has been reduced to an equivalent rail mileage on an arbitary basis of 3 miles for 1. The short-line distance from Savannah, the nearest of the South Atlantic ports, to Atlanta, is 260 miles, which added to the prorated distance of 250 miles, gives a total of 510 miles from New York, Philadelphia and Baltimore. In addition to the regular steamer lines, a large amount of traffic was conducted by tramp vessels, tending to still further reduce rates. As a result the ocean-and-rail rates controlled the rates from the East to the Southeast. Savannah is the nearest South Atlantic port to Atlanta and Chattanooga, the short-line distance to Atlanta being 260 miles, though this involved three distinct railways. The most direct line haul is over the C. of G. Ry., 294 miles. The short-line distance of 260 miles, with the prorating mileage of 250 miles, gives a total of 510 miles from New York, Philadelphia or Baltimore. Complainant insisted this total ought to be considered as the rate-making distance; defendants distinguished it as the prorating distance. The force of this distinction was not apparent, since if the water lines accept divisions as for 250 miles of rail haul, Savannah may be considered to be 250 rail-miles from the North Atlantic ports named, and Atlanta 510 miles. While the joint through ocean-and-rail rates to Atlanta were the same as to Chattanooga and less than to Knoxville, the combinations of the locals were lower to Atlanta than to the Tennessee points; and it appeared that Atlanta had a similar advantage over them on all-rail combinations on Norfolk. Though discriminated against by the 12c differential, it appeared that more than three-fourths of the entire traffic from Eastern points to Atlanta was handled by the ocean-and-

rail lines. The lower rail-ocean-rail rates to the Tennessee cities from the interior Eastern points naturally resulted from the competition of the much shorter all-rail routes; while the lower rates to Nashville resulted in a measure from water competition via the Ohio and Cumberland rivers. Application of the Baltimore rates to New York and Philadelphia would work an injustice to Baltimore, since in supplying the demands of trade in the Southeast, Baltimore purchases goods largely from the Northern ports. The prorating mileage, New York, Philadelphia and Baltimore to Norfolk, is estimated on the basis of two miles for one, instead of three for one, as in the case of the more southern ports. The prorating distance, Baltimore to Norfolk, is therefore 100 miles, and from New York and Philadelphia, 160 miles. The present Baltimore differentials on Atlanta traffic are on a 7c scale; Baltimore's advantage of New York with respect to Western traffic being but 111 miles, while for Southern points, Baltimore has an advantage of 187 miles under New York and 92 miles under Philadelphia. HELD, it is obvious that in the absorption of the rate to the ocean in the case of shipments to Chattanooga, and failure of carriers to absorb on shipments to Atlanta, there is presented a survival of competition which compels the absorption in the former case, while it is possible to secure similar rail-and-ocean-and-rail business to Atlanta without making this absorption. If this absorption were the result of the arbitrary action of carriers subject to the Act, it would be promptly declared to be unjust discrimination against Atlanta, and condemned; but the Commission is not persuaded that it is anything else than the result of legitimate competition, to the advantages of which the Tennessee cities are properly entitled, and the present adjustment of rates from Eastern port cities and interior points to Atlanta, whether all-rail, ocean-and-rail, or rail-ocean-and-rail, are not unreasonable, nor do they work undue discrimination in favor of Chattanooga, Knoxville or Nashville. Complaint dismissed. Atlanta Freight Bureau v. N. C. & St. L. Ry. Co., 29 I. C. C. 476.

(c) In 28 I. C. C. 47, carriers in Trunk Line and Central Freight Assn. territories were directed to revise their rates to and from the upper Mississippi River crossings from Keokuk to Dubuque, Ia. Westbound rates were submitted substantially coincident with the view of the Commission, while as to eastbound rates, the carriers wholly disregarded its expressed desire that such rates should be on a parity with westbound rates. Following precedent, higher eastbound rates were proposed. Rates proposed by Central Freight Assn. carriers in general showed no reduction other than the elimination of bridge arbitraries, the reductions ranging from 2c to 6c per 100 lbs. Existing rates to the upper crossings from Pittsburgh were constructed on 70 per cent of the New York rate, and points west of Pittsburgh were on a differential under Pittsburgh. On the other hand, from Pittsburgh to St. Louis the rates are 64½ per cent of the rate from New York to St. Louis, and from points west, the Central Freight Assn. scale was applied. From points east of the Buffalo-Pittsburgh line, rates are made on the same percentage basis to St. Louis and the upper crossings. HELD, that the rates between points in Central Freight Assn. Territory, beginning with Buffalo and Pittsburgh, and the upper Mississippi River crossings, should be 66 per cent of the New York rate to the upper crossings, the resulting scale for the six numbered classes being 59½c, 51½c, 39½c, 27½c, 24c and 20c, with the following arbitraries over the rates to and from St. Louis: 3c, 2½c, 2c, 1½c, 1½c and 1½c. The rates between points west of Buffalo and Pittsburgh and the upper crossings, for distances of more than 500 miles should be on the same scale of arbitraries over the St. Louis rates; the same to apply for less distances where the average distance between a Central Freight Assn. point and an upper crossing is less than the distance to St. Louis; but if greater, the scale of arbitraries to be exceeded by 1c on the first two classes, and ½c on the remainder from each 25 miles of excess distance. Eastbound rates to Central Freight Assn. points from upper crossings should not exceed eastbound rates from St. Louis by an amount greater than westbound rates from the same points to the upper crossings exceed those to St. Louis. Commodity rates between Central Freight Assn. points and the upper crossings should not exceed the rates between the same points and St. Louis by more than the differential applied between the same points on the class in which the commodity would fall under the Official Classifica-

tion. Mississippi River Case, 29 I. C. C. 530.

(d) Complainants sought the establishment of such through routes and joint rates on coal between points in the Kanawha Coal District of West Virgina, located on the K. & M. Ry., and various points on the C. & O. Ry. and its connections, the Seaboard Air Line, Southern Ry., A. C. L. R. R., and Norfolk Southern Ry., as were applied to such points of destination on shipments from mines on the C. & O. Ry. in the Kanawha Coal districts, and also asked the establishment by the K. & M. and C. & O. R. Rs. of a through route to the Cincinnati switching territory, with a rate of $1 for all deliveries in the Cincinnati district. The Kanawha Coal District is divided by the Kanawha River. On the north side is the K. & M. R. R., and on the south side, paralleling it for about 50 miles, between Gauley and St. Albans, is the C. & O. R. R. The coal field extending back from both sides of the river is reached by branches from these two carriers. The coal on both sides is of practically the same quality, brings substantially the same price, and to compete on a basis of equality, the cost of transportation from both sides must be the same, since coal is sold on a small margin of profit. Coal from mines on the K. & M. R. R. had rates which permitted it to meet competition only to certain territory in the Northwest, where competition was very strong, and in Cincinnati to a limited extent; while coal from the C. & O. R. R. mines had not only an extensive market in the Northwest, including all deliveries in Cincinnati, but also competitive rates to the Atlantic Coast and to markets in the South and East. The C. & O. and L. S. & M. S. R. Rs. had a controlling interest in the K. & M. R. R., and it appeared that while the C. & O. and K. & M. R. Rs. had refused through routes and joint rates requested by the K. & M. R. R. mines, they had accorded such privileges on shipments from C. & O. R. R. mines to Western destinations reached by the K. & M. R. R. and its connections. It appeared, however, that the C. & O. R. R. mines had the same joint rates to such destinations by a number of lines other than the K. & M. R. R. The through rate from the C. & O. R. R. mines to Richmond and Virginia cities was $1.60 per ton, and, being 30c less than the combination through rate of $1.90 from the K. & M. R. R. mines via the K. & M. and C. & O. R. Rs. and connections to the same points, rendered the latter rate prohibitive. This resulted from the refusal of the C. & O. R. R. to prorate and divide through rates with other roads in the Kanawha Coal District, a policy promoted by the desire to keep the movement of coal on its line confined solely to coal originating on its own line, so that its revenue might be as large as possible. The consequence was to shut neighboring mines out of markets reached by the C. & O. R. R. and its connections, and thus monopolize these markets, so far as the Kanawha district was concerned, for C. & O. R. R. coal. To Gauley, at the junction of the two lines, the main line of the K. & M. R. R. was but 60 miles, as compared with 80 miles in the case of the main line of the C. & O. R. R. The K. & M. R. R. had but 3 branches, the longest of which was 5 miles; while the C. & O. R. R. had 7 branches, ranging from 3 to 70 miles in length. Thus, the average haul of the K. & M. R. R. to Gauley was much less than that of the C. & O. R. R. It also appeared that the cost of operation was greater on the C. & O. R. R. than on the K. & M. R. R. owing to the heavy grades on the branches of the former. While the establishment of through routes from the K. & M. R. R. mines would involve a two-line haul, the additional cost due to the switching movement would be very small, and the distance to the Eastern points in question would be over 500 miles. The through route sought by complainants over the K. & M. and C. & O. R. Rs. to the Cincinnati switching district would give the C. & O. R. R. only a short haul of 35 miles. Moreover, the K. & M. R. R's. existing through route over the B. & O. S. W. R. R., including the entire length of its road, and covering a total of 289 miles, was not unreasonably long, as compared with the 241-mile route sought via the K. & M. and C. & O. R. Rs. HELD, that complainant is entitled to through routes and joint rates between stations on the K. & M. Ry. and its branches, and points specified in the complaint in Eastern and Southeastern territory; that the rates from such stations should not exceed existing rates to such destinations for shipments from mines on the C. & O. Ry; and that the policy of the C. & O. Ry. Co. to restrict the movement of coal on its line to coal originating on its own line is not justified. Complainants' re-

quest for a through route and joint rates to Cincinnati switching territory over the K. & M. R. R. and C. & O. R. R., and its connections, should not be granted. The fact that defendants have established through routes and joint rates from C. & O. R. R. mines to K. & M. R. R. destinations, while refusing to complainants the through routes and joint rates sought, does not constitute unlawful discrimination. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671.

(e) Difference in transportation conditions not large enough to justify present advantage in rates that St. Louis and lower crossings have over Iowa cities on west bank of river. Mississippi River Case, 28 I. C. C. 47, 57.

(f) Difference in cost of production cannot be recognized as a basis for the adjustment of freight rates between different localities. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 262.

(g) Difference in ocean rates between North Atlantic and Gulf ports equalized in total through rates from foreign port to St. Louis. Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 544.

(h) Market quotations offered to show advantage enjoyed by Omaha over Kansas City. There is no difference in the intrinsic value of like grain in the two markets, and it is not within the province of the Commission to adjust rates merely to equalize market conditions. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 686.

(i) Towns favorably located are entitled to the advantages accruing therefrom, and undue discrimination cannot be predicated upon a difference in rates forced by condition which the carrier cannot control. Seavey, Trustee, v. C. & N. W. Ry. Co., Unrep. Op. A210.

(j) The Commission has no authority to equalize by rate adjustments the commercial or natural advantages of one community over another. Wichita Business Assn. v. A. T. & S. F. Ry. Co., 30 I. C. C. 45, 55.

(k) Complainants attacked defendant's combination through rates for transportation of anthracite and bituminous coal and coke from Pennsylvania, West Virginia and Kentucky points via Chicago to Lombard, Glen Ellyn, Wheaton and West Chicago, Ill., points distant from Chicago 20, 22 , 24.9 and 30 miles, respectively, as unduly prejudicial compared with the rates to Chicago and Proviso, an intermediate point 13 miles from Chicago. Through rates were made by combination of the rates to Chicago plus local or proportional rates from Chicago to destination of 65c per ton on anthracite, 50c to 58c on bituminous coal, and 50c on coke; while to Proviso, defendants applied the Chicago rates on bituminous coal and coke and on anthracite a rate of 40c, less $4 per car. Proviso was within the Chicago switching limits and the bulk of the coal and coke was delivered to defendant at Proviso, and forwarded via the Indiana Harbor Belt Ry., the traffic being handled from Proviso in local freight trains and the published rates from Chicago applied as the local or proportional rates beyond. Elmhurst lies 3 miles west of Proviso, and in 30 I. C. C. 71 the rates of 60c on anthracite and 50c on bituminous coal from Chicago to Elmhurst were reduced to 45c and 35c, respectively. The territory within which complainants sold was circumscribed, being mostly within a radius of 2½ miles, and there was little competition between the complaining towns. HELD, that no reason appears for disturbing the rate relation existing between Elmhurst and the mentioned destinations, the through rates to all points should be reduced. To West Chicago, however, by reason of the increased distance from Chicago, the rate should not be reduced by more than 10c. The following maximums were fixed: On anthracite to West Chicago, 55c, and to the other points 50c; on bituminous coal to West Chicago, 48c, to Glen Ellyn and Wheaton 39c, and to Lombard, 35c; the rates on coke to be kept properly aligned with the rates on bituminous coal. Reparation denied. Lombard Brick & Tile Co. v. C. & N. W. Ry. Co., 30 I. C. C. 84.

(l) In 26 I. C. C. 112, it appearing that rates from Austin, Minn., to Chicago, Ill., had been 15.7c on cured meats, 17c on fresh meats, while on both commodities destined east of the Illinois-Indiana state line the rate was 14.6c, the Commission declared a proposed flat rate of 20c on both, withdrawing the proportional rate on shipments destined east, to be unreasonable and discriminatory to the extent that it exceeded 18.5c on fresh meats and 16.5c on packing-house products, to properly align Austin with competitive plants at Cedar Rapids,

Waterloo and Mason City, Ia. Complainant contended that the Commission, in considering the switching charge of $2 per car at the Iowa points absorbed by defendants, had regard only to outbound shipments, whereas at Waterloo and Mason City a similar charge was absorbed on shipments of hogs inbound. But, though inbound switching charges were absorbed by the C. G. W. Ry. at Waterloo and by the C. M. & St. P. R. R. at Mason City, these were in the nature of reciprocal services. In 1911 a change was made in the classification of packing-house products, a number of articles in that list being placed with fresh meats, which affected Austin, but not its Iowa competitors, since the latter points had the same rates on fresh meats and packing-house products. In 1912 about 3,500,000 pounds moved from Austin under the fresh-meat schedule which, but for the change in classification, would have moved under the lower cured-meat schedule. Swift & Co. of South St. Paul intervened, praying the establishment of the Austin rates from South St. Paul to Chicago. Contrary to the view entertained by the Commission in 26 I. C. C. 112, Austin and South St. Paul were in active competition, its shipments to Chicago proper in 1912 being 38 per cent, and its total business, as against Austin's shipments of 23.91 per cent to Chicago and 19.24 per cent through Chicago to points east. The relationship between St. Paul and Austin was closer than that between Austin and Iowa points, each drawing the greater part of its raw product from Minnesota on the state mileage scale; and their natural advantages were practically equal, for, while Austin was nearer the hog supply, South St. Paul was served by more carriers and on a through route of great density of traffic. At Austin, however, the average cost of hogs was 6c per 100 pounds more than at South St. Paul. The distance from South St. Paul to Chicago was 53 miles greater than that from Austin. HELD, that the rates on fresh meats and meat products from Austin to Chicago should not exceed 18 and 16c per 100 lbs., respectively. Rates from South St. Paul to Chicago should in no case exceed the rates from Austin. Reparation awarded. Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98.

(m) It is not within the province of the Commission to equalize disadvantages and advantages incident to geographical situation. Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98, 102.

(n) Complainant attacked the carload commodity rates of 69c and 78c on agricultural implements from Wichita, Kan., to points in the panhandle of Texas, Higgins to Folsom, as unreasonable and discriminatory, compared with like rates from Kansas City, Mo., and also prayed that certain storage-in-transit privileges be extended to Wichita. Kansas City and Wichita are jobbing points for agricultural implements, their supply coming from points on the Mississippi and east. On like shipments from these eastern points the rates to Kansas City were 22½c, while to Wichita the rate was 43½c on implements taking the 69c rate to final destinations, and 52c rate on those taking the 78c rate, thus making the cost of shipment via Wichita either 21c or 29½c greater than if jobbed through Kansas City. Wichita is 206 miles nearer the Texas destinations, and the service identical with that from Kansas City, except that switching charges at Kansas City are $1 more per car. Wichita has class rates to Texas destinations, giving it almost as good a combination rate as Kansas City enjoys, but the carload mixture permitted is not as liberal as that provided under the commodity specifications—a grave objection with jobbers. It did not appear that Kansas City enjoys any storage-in-transit privilege on freight destined to the Texas points concerned. HELD, that the situation is unlawfully discriminatory against Wichita. Defendants given until Aug. 1, 1914, to adjust the commodity rates out of Wichita, so that the same relative difference shall be maintained as now exists between the class rates applicable from Kansas City and Wichita. Storage-in-transit and reparation denied. Wichita Business Assn. v. A. T. & S. F. Ry. Co., 30 I. C. C. 374.

(o) The southern manufacturer of pig iron is entitled to every advantage growing out of his economic location, just as the northern manufacturer is entitled to any benefits that may accrue to him by reason of his proximity to the markets, and these advantages should not be disturbed by the Commission by fixing freight rates predicated upon the cost of production. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 601.

(p) Rates will not be readjusted by Commission to equalize natural or commercial disadvantages. Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 16.

(q) Commission ought not to attempt to equalize commercial conditions. Kansas-California Flour Rates, 29 I. C. C. 459, 462.

(r) Bridgeport, Ala., should have the same rates to points west as Dalton, Ga. Attwood Co. v. N. C. & St. L. Ry., Unrep. Op. A411.

(s) Complainant alleged that it was subjected to certain disadvantages in shipping corn to its plant in Cedar Rapids, Iowa, and forwarding the milled product to interstate destinations, and prayed re-establishment of transit formerly enjoyed and reduction of the outbound rates on starch. Complainant had the only starch factory at Cedar Rapids, but others were engaged in manufacturing other corn products. In 16 I. C. C. 232, 21 I. C. C. 97 and 21 I. C. C. 541 the question whether complainant was discriminated against in favor of competitors at Keokuk, Iowa, and Pekin, Ill., was considered, but not the question of the reasonableness of rates on starch to destinations north, south and west of Cedar Rapids. Alleged Violation of Section 2.—Rates on other products of grain from the point of milling to destination were often the same as those applied to the movement of the grain from which the product was milled, but rates on starch were on a substantially higher level than on corn; but there was no competition between starch and the other corn products. HELD, that the denial to complainant of the privilege of milling corn into starch under a transit rate, the right being granted to other industries to mill corn into other uncooked corn products, did not subject complainant to discrimination under section 2, nor to prejudice under section 3. Rates to Minneapolis, St. Paul and Duluth.—Complainant prayed that the rate on starch from producing points in Iowa, Illinois and Indiana be adjusted so as to give Cedar Rapids the benefit of its location, the rate being 15c from all points of origin, though Cedar Rapids, 256 miles from St. Paul, was from 118 to 241 miles nearer St. Paul than the other points. The rate on starch from Peoria, Pekin, Keokuk and Chicago rate points to St. Paul was the same as the rate on other corn products, while the rate from Cedar Rapids was 2½c above the corn products rate. Starch rates from points of origin to Duluth were 20c, or from 1½c to 2c above the corn products rate. HELD, that existing rates on starch from Cedar Rapids to St. Paul, Minneapolis and Duluth were unreasonable in that they denied the natural advantages of its location to complainant and should not exceed 12½c in case of the two former and 17½c in case of the latter destination. Rates to St. Louis, Mo.—Complainant attacked the combination of rates on corn to Cedar Rapids and on starch therefrom to St. Louis. The total haul from Omaha to St. Louis was, for instance, approximately the same through Peoria as through Cedar Rapids, but the rate via Peoria was but 16½c as against 22c via Cedar Rapids. But practically all of complainant's originated in Iowa and was shipped under low intrastate rates. Rates on starch from Cedar Rapids and Keokuk, Iowa, Peoria, Pekin and Decatur, Ill., and Indianapolis, Ind., to St. Louis were 12½c, 8c, 7c, 7c, 7c and 9½c, for distances of 320, 179, 162, 152, 113 and 341 miles, yielding 7.81, 8.93, 8.64, 9.21, 12.39 and 5.60 mills per ton-mile. On Missouri River corn milled at Chicago and shipped to St. Louis the rate was but 20c for 790 miles; since the starch moved to St. Louis from Chicago for 3½c less than from Cedar Rapids. The manufacturer at Chicago can go to the Missouri River for his corn, haul it through Cedar Rapids, and lay the product down at St. Louis at a rate 2c less than paid by the Cedar Rapids manufacturer, although the movement by way Chicago is 200 miles longer. HELD, a manufacturer should not be penalized with the rates on his product as an offset to his closer proximity to the raw material, and the rate on starch from Cedar Rapids to St. Louis should not exceed 10½c. Rates to Kansas and Oklahoma.—Rates on starch from Cedar Rapids to Wichita, Kan. and Oklahoma City, Okla., were 55c and 54c, being 9c below fifth class rates. These were less than the rates from any other starch producing point except Keokuk, Iowa; they were, however, higher than the rates on corn and grain. HELD, that there was no apparent need for reduction in the starch rates to Kansas and Oklahoma points, and the complaint was dismissed as to such destinations. Rates to Texas.—Rates from Cedar Rapids, Chicago, Keokuk, Pekin, Peoria, St. Louis and Kansas City were 69c, 69c, 66c,

69c, 69c, 62c and 57c to Texas common points, 69c, 52½c, 60½c, 54c, 54c, 62c and 62c to Galveston, and 69c, 54½c, 62½c, 56c, 56c, 62c and 62c to Houston. These rates were largely controlled by water competition of water lines between New York and Galveston. Stronger competition had reduced rates on canned goods from Cedar Rapids to Texas common points to from 58c to 65c. Keokuk enjoyed a 3c differential under Cedar Rapids through being in the Omaha-Davenport group, though the Omaha-Davenport rates applied from Cedar Rapids on packing-house products and fresh meat. The local rates from Chicago to New York were 17½c, from Keokuk 23½c, and from Peoria 19c. These rates, in connection with the 15c rate, New York to Galveston and the 37c rate New York to Houston, had reduced the rates from Chicago, Keokuk and Peoria below the Cedar Rapids basis. HELD, that the all-rail rates from Cedar Rapids to Texas common points, Galveston and Houston, should not exceed the Keokuk rates of 66c, 60½c and 62½c, respectively. **Rates to Arizona, New Mexico, California Terminals and North Pacific Coast Points.**—Carload rates from Cedar Rapids to Arizona were 4c less than Chicago rates; L. C. L. $2.03 to $2.68. Rates from Cedar Rapids to the Pacific Coast, C. L., were $1, the movement being about equally divided between rail-and water and all-rail. HELD, that such rates were not shown to be unreasonable, but appeared to be reasonably related to those from competing points. **Rates to Destinations South of the Ohio.**—Rates from Cedar Rapids, Peoria, St. Louis and Cairo to Atlanta were 46c, 41c, 41c and 33c for distances of 862, 693, 610 and 492 miles; to Birmingham 40c, 35c, 35c and 27c, for 782, 614, 479 and 346 miles, and to Vicksburg 37c 34c, 30c and 24c for 851, 665, 542 and 390 miles. Rates from Cedar Rapids, Chicago and St. Louis to Shreveport, La., were 46c, 46c and 39c. Rates on corn and corn products were in all cases somewhat lower. HELD, that the rates on starch from Cedar Rapids and Ohio River crossings to southeastern and Mississippi Valley destinations were neither unreasonable nor discriminatory. **Application of Minimum Weights.**—The carload minimum from Cedar Rapids to Ohio River crossings was 40,000 lbs.; thence to points in southeastern territory it was 24,000 under Southern Classification and 30,000 under commodity rates. The average weight of a carload of starch was shown to be 44,000 lbs. or over. HELD, that the rules governing the application of the 40,000 lb. minimum was not unreasonable. **Rates on Corn Oil.**—Complainant attacked the rates from Cedar Rapids on corn oil, a product ranging in value from $4 to $7 per 100 lbs., and shipped in tank cars or in barrels, as unreasonable and discriminatory. Rates to Chicago, Kansas City and Duluth, were from Cedar Rapids, 15c, 22c and 22c; from Keokuk, 10c, 22c and 22c; from Des Moines, 23½c, 22c and 26c. The rate from Cedar Rapids to St. Louis was 15c, and from Chicago, approximately the same distance, 11c. From Cedar Rapids to Peoria, the rate was 12½c, and from Chicago to that point 9c, for a haul but 35 miles less. HELD, that rates on corn oil shipped from Cedar Rapids are unreasonable to the extent they exceed the following: To Chicago, 11c; Peoria, 9½c; St. Louis, 12c; St. Paul, 17c, and Winona, 17c. Reparation awarded. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 606.

(t) A manufacturing enterprise is entitled to whatever advantages it may possess by way of geographical location and proximity to the sources of supply of its raw material and the markets for its products. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 595.

(u) Neither the carriers nor the Commission may predicate rates upon the necessities of the shippers, and efforts to equalize market competition may not justify or require rates that are unreasonably low nor permit unjust discrimination. Hide Rates to Los Angeles, Cal., 31 I. C. C., 633, 635.

(v) Complainants attacked the rates on pig iron from certain Virginia furnaces to various points in New England and the middle Atlantic states, as unreasonably high compared with rates from competing points in Pennsylvania and New York. Taking Low Moor as typical of the Virginia furnaces, rates to Baltimore, Philadelphia, New York, Stamford, Conn., and Boston were $2.45 $3.00, $3.95, $3.75 and $3.75, for distances of 255, 351, 442, 478 and 653 miles. Pig iron from Virginia furnaces is of a peculiar quality and competes only with that from certain points in New York, Pennsylvania and Ohio. To Baltimore from Low Moor, Va., Pittsburgh, Emporium, Saxton and Punxsutawney, Pa.,

Youngstown, Ohio, and Buffalo, N. Y. competing points, the rates were $2.45, $2.15, $1.80, $1.50 $1.85, $2.58 and $2.45, yielding 9.6, 6.5, 6.5, 7.2, 6.9, 6.4, and 6.2 mills per ton-mile, for distances of 255, 329, 275, 207, 265 395 and 395 miles. Rates from the Virginia furnaces were materially higher, mile for mile, than the rates from these competing points. Traffic from the Virginia furnaces is handled by the C. & O. Ry. to Potomac Yards or by the N. & W. to Hagerstown, where it is delivered to northern line connections. The ton-mile receipts of the southern lines were materially less than those of the northern lines and not appreciably higher than those on pig iron generally in southern territory. For instance the rate from Low Moor to Potomac Yards was $1.45, yielding 6.7 mills per ton-mile for 215 miles, and from Potomac Yards to Baltimore $1.00, yielding 25 mills for 40 miles; and on transportation to Boston the rate to Potomac Yards was $1.25, yielding 5.8 mills for 215 miles, and thence to Boston $2.50, yielding 5.7 mills for 438 miles. The per-ton-mile rate received by northern lines from northern competing furnaces was much less than that received from these southern furnaces and they have suffered severely from this competition. Rates from Virginia furnaces to the points of destination were 20 to 50 per cent higher than rates from other representative furnaces east of the Mississippi River to points ranging from 250 to 750 miles distant; thus, from Birmingham, Ala., to New Orleans, La., Savannah, Ga., and Cincinnati, Ohio., the rates were $3.00, $2.75 and $3.25 per ton, yielding 7.55, 5.66 and 6.03 mills per ton-mile for distances of 355, 434 and 481 miles. Rates from Low Moor to Cincinnati, Chicago and St. Louis were $2.35, $3.20 and $3.60, yielding 6.1, 4.7 and 5 mills per ton-mile for 383, 681 and 716 miles. The car-mile earnings on pig iron between the Virginia points and Philadelphia, Baltimore and New York exceeded those on lumber, wood-pulp, cattle and soda ash by 50 per cent. HELD, that the rates to Baltimore, Philadelphia and New York from the southern points in question were unreasonable per se, and the rates to such cities and to Boston were unjustly discriminatory and should not exceed the following: Baltimore, $2.25; Philadelphia, $2.75; New York, $3, and Boston, $3.25. Low Moor Iron Co. v. C. & O. Ry. Co., 30 I. C. C. 615.

(w) Commission has no authority to equalize by adjustments the commercial or natural advantages of one community over another. Wichita Business Asso. v. A. T. & S. F. Ry. Co., 30 I. C. C. 45, 55.

(x) Endeavor to equalize alleged discrimination against St. Louis not sufficient justification for an increase in rates to Memphis. Wheat Rates from Oklahoma, 30 I. C. C. 93, 97.

(y) Not the province of the Commission to equalize geographical situations. Hormel & Co. v. C. M. & St. P. Ry. Co., 31 I. C. C. 98, 102.

(z) The Commission has repeatedly held that it was no part of its duty to so adjust rates as to enable any industry to do business at a profit, to equalize market conditions, or overcome disadvantages not arising from a violation of the statute. Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 612.

(aa) Commission has no authority to equalize by rate adjustments the commercial or natural advantages of one community over another. Wichita Business Association v. A. T. & S. F. Ry. Co., 30 I. C. C. 45, 55.

(bb) It might be shown that the existence of a certain rate or its non-existence would prevent persons in a certain locality from engaging in a certain line of business; but it cannot be claimed that the Commission should arbitrarily localize an industry through the means of fixing any freight rate. Nebraska State Ry. Com. v. C. V. Ry. Co., 32 I. C. C. 41, 46.

(cc) It is not the duty of the Commission to equalize rates as the crops change. Board of Trade of Kansas City v. St. L. & S. F. Ry. Co., 32 I. C. C. 297, 311.

(dd) Complainant attacked the rate of $1.50 per 100 lbs., yielding 14.93 mills per ton-mile for 2016 miles, charged on compressed cotton and linters from points in southern Texas, via Denver, to Butte, Mont., as unreasonable and discriminatory, as compared with a rate of $1.20, yielding 10.09 mills per ton-mile for 2,379 miles on shipments via El Paso, Tex., and Portland, Ore., to Spokane, Wash. The price of linters ranged from $400 to $1,000 per minimum carload of 20,000 lbs. Butte and Spokane manu-

facturers came in direct competition at points in western Montana, to which distributing rates were on the same mileage basis. HELD, that the existing rates to Butte were unreasonable to the extent that they exceeded $1.20 on cotton and linters when compressed, $1.31 where carriers were to compress, and $1.40 uncompressed. Reparation denied. Railroad Comm'rs of Montana v. A. T. & S. F. Ry. Co., 32 I. C. C. 316.

(ee) A rate adjustment which deprives a given point of shipment of the advantage over other points accruing from its location, as to certain distination points, while at the same time it gives to such point no corresponding assistance as to other destination points, with respect to which it is at a disadvantage, is wholly illogical and manifestly discriminatory. Oklahoma Portland Cement Co. v. O. L. & G. Ry. Co., 32 I. C. C. 221, 224.

(ff) Complainant attacked the class rates from St. Louis, Mo., to Joplin, Mo., applied as parts of through rates for shipments originating east of the Illinois Indiana state line; commodity rates on a number of articles from St. Louis to Joplin, applied as parts of through rates on shipments originating at points east of the Mississippi River; commodity rates on designated imports from New Orleans and other gulf ports to Joplin; commodity rates from points in Oklahoma, Arkansas, Louisiana and Texas to Joplin; class rates and rates on a limited list of commodities from Joplin to points in Kansas, Oklahoma, Arkansas, located on the line of the carriers diverging from Joplin; rates on news print paper from Minnesota points to Joplin; and rates on petroleum and its products from so-called Chicago rate points to Joplin. Joplin is a jobbing center of 32,000 inhabitants. It is strongly competitive with Kansas City and Springfield, Mo., and also competes with and bears a rate rela- Ft. Scott, Galena, Pittsburg, Coffeyville, tion to Neosha, Nev., and Carthage, Mo.; Chanute, Parsons and Independence, Kan.; Vinita and Muskogee, Okla., and other points. **Paper and Petroleum Rates.**—No testimony was offered concerning the rates on news print paper and on petroleum. HELD, they should be dismissed from consideration. **Import and Commodity Rates.**—As to the commodity rates on imports from New Orleans and other gulf ports and the rates complained of on commodities from Oklahoma, Arkansas, Louisiana and Texas, complainant attacked these rates in a general way as being discriminatory against Joplin and in favor of Kansas City. HELD, lack of uniformity in the relation of rates to different destinations on commodities, many of which have no connection one with another, is not sufficient to establish unlawfulness. **Long and Short Haul Violations**—Violations of the fourth section were alleged in that rates on traffic to Kansas City moving through Joplin were lower than to Joplin. These rates were protected by applications for relief. HELD, since the alleged violations were not specified in detail, they would not be considered in this proceeding. **Inbound Rates**—As to the inbound rates, in their relation as parts of through rates from points east of the Indiana-Illinois state line. The class rates from St. Louis to Joplin were:

1st	2nd	3rd	4th	5th	A	B	C	D	E
74	64	50	40	28	33	27.5	21.5	17	15

From St. Louis to Kansas City the class rates were:

1st	2nd	3rd	4th	5th	A	B	C	D	E
60	45	35	27	22	24.5	19.5	17	13.5	11

There is a proportional scale applicable from East St. Louis to Kansas City on traffic originating east of the Illinois-Indiana line, fixed by the Commission in the Warnock case, 21 I. C. C. 546, as follows:

1st	2nd	3rd	4th	5th	A	B	C	D	E
55	41	32	24	20	22	18	15	12	10

The underlying theory of complainants' contention as to discrimination against Joplin in favor of Kansas City is that reasonable and non-discriminatory rates to Joplin would be predicated upon the same revenue per ton per mile as to Kansas City. The proportional rates as above from East St. Louis to Kansas City apply also from other Mississippi River crossings to other Missouri River cities, the average distance from the nearest Mississippi River crossing being about 275 miles. The short line distance from St. Louis to Joplin via the St. L. & S. F. R. R. is 332 miles and from St. Louis to Kansas City 277 miles. The average short line distance from all the Mississippi River crossings to Joplin is about 425 miles, or approximately 154 per cent of the distance to Kansas City. Analysis of the exhibits filed leu to the conclusion that, with minor exceptions, the class and commodity rates from St. Louis to Joplin not only compare favor-

ably with the local and proportional rates from the Mississippi River to Kansas City, but in many instances are on a lower per ton-mile basis. To Neosho, south of Joplin, the short line distance via the St. L. & S. F. R. R. from St. Louis is 310 miles. The Missouri Commission's Schedule B for that distance, applying to Neosho, is observed at Joplin, inasmuch as the latter point is intermediate via the Kansas Citv Southern from St. Louis. The same scale, with slight variations, applies to Galena, Ft. Scott and Pittsburg, Kan., and other contiguous points. The Joplin class rates are considerably less, as a whole, for the distance of 332 miles than the mileage rates for that distance prescribed by the Commission in Corp. Com. of Okl... v. A. &. S. Ry. Co., 26 I. C. C. 520, applying from Oklahoma into Texas; less than the suggested rates in Iowa R. R. Com. v. A. & E. R. R. Co., 28 I. C. C. 193, to apply between points in Iowa and points in Nebraska and Kansas. They are lower than the rates prescribed in the cases cited for the distance to Neosho, 310 miles. They are lower for some classes and slightly higher in others than the rates prescribed in State of Kansas v. A. T. & S. F. Ry. Co., 27 I. C. C. 673. They are also less than the Missouri Commission's scale for 332 miles. Substantially the same thing may be said as to the rates on the several commodities named, while both as to classes and commodities the rates to Joplin are lower per ton-mile than to Vinita and Muskogee, Okla., competing points, 360 and 433 miles, respectively, from St. Louis. In 1901 the first class rate to Joplin was 87c, in 1902 85c, in 1904 74c, the present figure. With the exception of Class E there have been substantially the same reductions in the other classes. HELD, there is nothing in the record to show that there is strong similarity of traffic and transportation conditions at Joplin and at Kansas City, or that Joplin is so circumstanced as to justify the Commission's prescribing the rates asked for. The existing rates were not shown to be unreasonable per se. **Outbound Rates**—The gravamen of the complaint as to outbound rates to points in Kansas, Oklahoma and Arkansas was that the ability of Joplin to reach the consuming markets is restricted by the limited area in which so-called jobbers' rates apply, and that such jobbers' rates as are in effect are too high. Objection was made by defendants on the ground of the general nature of the allegation in this respect. Efforts at the hearing to have the specific rates more clearly designated were unsuccessful. From Kansas City no jobbers' rates are in effect. Such rates are in effect from Springfield but they were not referred to by complainants. HELD, since the record consisted almost wholly of comparisons of the rates from Joplin with those from Kansas City, such evidence could not properly be made the basis of an order. **Jobbers' Rates from Joplin**—Consideration of these rates showed that the increases as between different statements are too precipitate in certain cases, the rates increasing in some instances first class from 49c for a haul of 129 miles to 51c for 135 miles, from 50c for 106 miles to 58c for 111 miles, from 39c for 90 miles to 62c for 95 miles. Defendants admitted this and indicated their purpose to make a revision. HELD, each community is entitled to reasonable rates, by whatever name known, and carriers may not, by means of special adjustments, establish restricted trade zones. Ordinarily distance alone cannot determine the measure of rates, but glaring inconsistencies such as these cannot be explained on the ground of varying transportation conditions. Defendants will be expected to correct the inequalities indicated. Complaint dismissed. Commercial Club of Joplin v. M. P. Ry. Co., 32 I. C. C. 226.

(gg) In 29 I. C. C. 449, the Commission found (1) that subsequent to Dec. 11, 1911, rates on hides and pelts from Oklahoma points of origin to St. Louis, Mo., East St. Louis and Chicago, Ill., and Milwaukee, Wis., should not have exceeded rates on packing house products between the same points; (2) that complainants were entitled to reparation, and (3) that in adjusting the relationship of rates as between Oklahoma City, Okla., and competing points its rate to St. Louis should be 3c higher than from Wichita, Kan., and 5½c lower than from Fort Worth, Tex. Existing rates were as follows:

	Hides and Pelts.		
From	Local. Cents.	Local. Cents.	Proportional. Cents.
Fort Worth	32¼	36	32¾
Oklahoma City	28¼	32	27½
Wichita	24½	27	24½

In partial compliance with the Commission's finding the carriers published tariffs in which, while no change was proposed as to Wichita, locals and pro-

portionals on hides were proposed from Oklahoma City and Fort Worth equal to rates on packing-house products, resulting in an adjustment conforming to the relationship suggested by the Commission as to proportionals, but ignoring such relationship as to local rates. The complaint covered only rates in effect from August 1, 1911, to April 1, 1913. On rehearing it appeared that, while there was a considerable local movement of hides and pelts to St. Louis and East St. Louis, carriers had continuously maintained a rate of 24½c from Wichita, both local and proportional, but only proportional on packing-house products. HELD, (1) that the pleadings did not justify any finding with respect to rates other than those in effect between August 1, 1911, and April 1, 1913; (2) that the local and proportional rate on hides and pelts from Oklahoma City should have been 27½c, and from Fort Worth 32¾c; (3) that the Commission having in Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C., 160, prescribed rates of 12c, 17c and 21c on packing-house products from Wichita, Oklahoma City and Fort Worth to Kansas City defendants might to that extent depart from the approved relationship between those points; (4) reparation denied. **Docket No. 447.** Carriers proposed increases in the rates from Oklahoma points to St. Louis and East St. Louis; Grand Rapids and Holland, Mich.; Fremont, Mich.; and Alpena, Boyne City, Cheboygan, Kegomic and Petoskey, Mich.; the existing rates being respectively 28¼c, 42¼c, 45¼c and 48¼c, and the proposed rates 32c, 44½c, 47½c and 50½c. HELD, that the proposed increases were not justified. Rates on hides and pelts for the future should not exceed the combinations on East St. Louis, made by using the proportional to East St. Louis and the locals beyond. Crowdus Bros. v. A. T. & S. F. Ry. Co., 32 I. C. C. 355.

(hh) Carriers cannot be expected to remove disadvantages resulting from location. Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 21.

(ii) Carriers cannot be expected to equalize rates from all producing communities. Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 21.

(jj) A just equality of opportunity for shipper and locality is required by law. Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 171.

(kk) Jobbing points not concerned as to measure of rate itself but interested solely as to relative adjustment between them. Rates on Sugar, 31, I. C. C. 495, 509.

(ll) A manufacturing enterprise is entitled to whatever advantages it may possess by way of geographical location and proximity to sources of supply of its raw material and markets for products. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 595, 596.

(mm) Neither carriers nor Commission may predicate rates upon necessities of shippers, and efforts to equalize market competition may not justify or require rates that are unreasonably low or permit unjust discrimination. Hide Rates to Los Angeles, Cal., 31 I. C. C. 633, 635.

(nn) Neither carriers nor Commission may predicate rates upon necessities of shippers. Hide Rates to Los Angeles, Cal., 31 I. C. C. 633, 635.

(oo) Reasonableness of rates cannot be determined solely by considering the geographical and economic disadvantages under which Montana producers are laboring. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 646

(pp) Complainant's disadvantage is due to distance of Kansas City from market, and to commercial conditions which fix prices of scrap iron at market. Rate not found unreasonable. Sonken-Galamba Iron & Metal Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-718.

(qq) It is neither the Commission's function nor that of carriers to equalize economic or commercial conditions. San Toy Coal Co., v. A. C. & Y. Ry., 34 I. C. C., 93, 97.

(rr) In Boldt Co. v. C. R. I. & P. Ry. Co., 27 I. C. C. 11, the Commission considered rates on glass sand from Ottawa, Ill., to various points in Ohio, and prescribed a miximum of $1.60 per ton on shipments from Ottawa to Cincinnati. On rehearing, it appeared, rates to Cincinnati, Columbus, Zanesville and Barnesville, O., were $1.60, $2.18, $2.40 and $2.60, yielding 5.16, 6.14, 5.53 and 5.26 mills per ton-mile, respectively, for distances of 310, 355, 434, and 494 miles. Sand of all kinds averaged 39 tons to the carload, and brought from 30 to 45c

per ton f. o. b. shipping points. The rates from Ottawa to Muncie, Ind., Tiffin and Cleveland, Ohio, were $1.45, $1.82 and $2.18 for distances of 238, 309 and 435 miles. On ground limestone, used in making amber glass, loading the same as glass sand and selling for 75c per ton f. o. b. the rate was $1.00 from Marblehead, Ohio, to Cincinnati, distance 227 miles. Under the $2.18 rate, Ottawa to Columbus, the car-mile earnings on a 40-ton car were 24.5c as compared with an average revenue of from 11c to 13c on all freight hauled by a number of defendants. From Berkeley Springs, W. Va., Columbus and Zanesville, rates were $1.78 and $1.48 per ton, yielding 4.49 and 4.38 mills per ton mile for hauls of 396 and 338 miles; but this was for a one-line haul, while the rate from Ottawa to the named destinations generally involved a three line haul. HELD, that the rates on glass-sand from Ottawa should not exceed $1.80 to Cincinnati, $2.00 to Columbus and Mt. Vernon, $2.20 to Zanesville and Lancaster and $2.40 to Barnesville. Reparation denied. Boldt Co. v. C. R. I. & P. Ry Co., 33 I. C. C. 8.

(ss) The equalization of freight costs as a principle of rate making must be condemned as being but one phase of the more general equalization of costs of production, which the Commission has frequently condemned. Bituminous Coal Rates to Baltimore and Other Cities, 33 I. C. C., 307, 315.

(tt) An attempt to equalize conditions that are unequal, as by increasing rates to prevent a consignee of coal delivered over the piers and transported thence by water from receiving it at a lower cost than the consignee who receives his coal all rail, has been repeatedly declared not to be the function of carriers. Bituminous Coal Rates to Baltimore and Other Cities, 33 I. C. C., 307, 315.

(uu) The Commission has repeatedly held that it has no authority to equalize economic conditions or so to adjust rates that compensation is made to one producing region for its natural disadvantages as compared with another producing region with which it desires to compete. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C., 360, 363.

(vv) Complainant attacked the rates on black-iron sheets from Pittsburgh, Pa., to Delphos, Ohio, and on galvanized sheets from Delphos to Chicago, Ill., and points beyond as unreasonable and prejudicial, in that the combination on Delphos grossly exceeded the through rates by 8½c. The two commodities took the same rate. Delphos, on the short line, was 275 miles from Pittsburgh, and 193 miles from Chicago. The rates were: Pittsburgh to Chicago, 18.9c; Pittsburgh to Delphos, 15.2c; and Delphos to Chicago, 12.6c. Competitors in central freight association territory off the short line paid combination rates exceeding the through rate by from 3 to 12.6c; and the disadvantage under which complainant labored was due partly to commercial conditions. HELD, that the rates in question were not shown to be either unreasonable or unduly prejudicial. Complaint dismissed. Delphos Mfg. Co., v. Penn. Co., 33 I. C. C., 400.

(ww) Complainant assailed the carload rates on wire from Pittsburg, Pa., to Adrian, Mich., and on wire fence from the latter point to Chicago, Ill., as unreasonable and discriminatory, as compared with the wire and wire fence rates from Pittsburg to Chicago and asked that Adrian be granted proportional rates from Pittsburg and to Chicago equal to the Pittsburg-Chicago through rate, plus a reasonable charge for the privilege of unloading and reloading at Adrian. From Pittsburg to Chicago the rate was 18.9c for 468 miles; Pittsburg to Toledo, Ohio, 13.7c for 244 miles; Pittsburg to Detroit and Adrian, Mich., 15.8c for 304 and 277 miles, respectively. From Adrian, Toledo, and Detroit, to Chicago the rate was 13.7c for distances of 211, 234, and 272 miles. From Pittsburg to Chicago, the combination on Adrian exceeded the joint through rate by 10.6c. Complainants main competitors were at Pittsburg. HELD, following Delphos Mfg. Co. v. P. Co., 33 I. C. C., 400 that Adrian was not entitled to the through rates asked, but that the grouping of Adrian with Detroit on traffic from Pittsburg was unduly prejudicial, and that the rate from Pittsburg to Adrian should not exceed the rate to Toledo by more than 1c. Adrian Wire Fence Co., v. L. S. M. S. Ry., 33 I. C. C., 403.

(xx) Complainant attacked the rates on news print paper in carloads from Galveston, Tex., to Oklahoma City and other Oklahoma points as unreasonable and discriminatory. Class rates from Galveston to Oklahoma City, McAlester, Lawton, Muskogee, and Tulsa, were 57, 57, 61, 65, and 68c for distances of 514,

656, 481, 480, 543, and 586, miles; while an important commodity rate of 45c applied to Oklahoma City. The rates were prohibitive, no paper moving thereunder. The class rate from St. Louis, distant 543 miles, was 63c, the commodity rate 40c, a difference of 23c. From Chicago via the A. T. & S. F. Ry. to Oklahoma City, Wichita, and Topeka, distances of 854, 671, and 524 miles, the rates were 45, 40, and 25c. HELD that the existing rates from Galveston were unreasonable, and that the rates to Oklahoma City, McAlester, Muskogee, Lawton, and Tulsa should not exceed 38, 38, 40, 40, and 42c respectively. Corporation Com'n of Oklahoma v. A. T. T. & S. F. Ry., 33 I. C. C. 503.

(yy) It is not the duty of the Commission to equalize rates as crops change. Board of Trade, of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C., 297, 311.

(zz) The Commission cannot prescribe a rate to equalize for Alexandria, La., advantages enjoyed by jobbers at competing points who move their canned goods to Port Arthur, Tex., on low rates offered by tramp steamers, and reship by rail to destination. Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955.

(3a) Complainant attacked the rates on wheat and corn, and articles taking the same rates, from certain stations on the U. P. R. R. in Nebraska to St. Joseph and Kansas City, Mo., and Leavenworth, Kans., as unreasonable and discriminatory compared with rates to the same destinations from cross-country stations in Nebraska on the C. B. & Q. R. R. The given destinations took the same rates from the territory involved. To Kansas City via the U. P. R. R. the rates from Shelton, Overton, and Cozad were 17.00, 19.95, and 20.80c, respectively, for distances of 365, 409, and 434 miles; via the C. B. & Q. R. R. from Kenesaw, Loomis and Eustis, the rates were 14.60, 16.60, and 17.52c, for distances of 298, 342, and 374 miles. Kenesaw was 16 miles across country from Shelton. It appeared that local dealers on the U. P. R. R. were under no disability in purchasing grain by reason of the rate adjustment. HELD, that the rates attacked had not been shown to be unreasonable or discriminatory, since though the rates on the U. P. R. R. were higher the hauls were longer. Complaint dismissed. Nebraska State Ry. Comm. v. U P. R. R., 34 I. C. C. 381.

(3b) Complainant attacked the rates on apples, deciduous fruit, potatoes, onions and other vegetables from Montrose, Delta, Hotchkiss, and Paonia, Colo., to destinations east of Colorado, the charges exacted for the refrigeration of such shipments, and defendant's failure to publish and maintain rates on apples in bulk, as unreasonable, excessive, and unjust. RATES ON APPLES: Carload rates on apples in packages or in bulk from the named points of origin to New York, Cleveland, St. Paul, Chicago, and Missouri River common points were 100, 89 1-2, 75, 75, 60c; on other deciduous fruits, 115, 113 1-2, 95, 100 and 90c. Lower rates were not accorded on apples in bulk, because it had been found that they were boxed at destination and sold in competition with those shipped in packages. HELD the record did not warrant an order requiring lower rates on low-grade apples in bulk than the existing rates on apples. DECIDUOUS FRUIT: The rates on deciduous fruits other than apples, from the designated points of origin to Texas common points yielded 1.884c per ton-mile revenues of 1.843 and 1. 079c from Greeley, Colo., and Sacramento, Cal., respectively, to the same Texas points, for hauls of 981, and 2318 miles. The shipments moved by freight, were of a highly perishable nature resulting in heavy damage claims, and the cars were returned empty. HELD that the existing rates were not shown to be unreasonable or discriminatory. POTATOES, ONIONS, and OTHER VEGETABLES: The rates on potatoes from Montrose and Greeley to the more southerly Texas common points were 58 and 63c, yielding 1.085, and 1.211c per ton-mile for distances of 1175, and 981 miles. On other vegetables, the ton mile revenue was 1.118, and 1.258c, respectively. Potatoes were shipped in refrigerator cars by fast freight, and under transit privilege. HELD that the rates on potatoes and other vegetables were not shown to be unreasonable or discriminatory. REFRIGERATION: Apples from the designated points of origin were accorded half-tank refrigeration. On four cars shipped thence to Pittsburg, Pa., the cost of refrigeration was $200, total expense $202.21, net loss $2.21; on 9 cars shipped to Missouri, Kansas, and Nebraska, the total refrigeration was $360, total expense $437.27, net loss

$77.27. The charge per car from the western slope of Colorado to Illinois was $47.50; from California $75.00. Defendant carrier expended large sums in rental of cars lying idle along its line awaiting. HELD that the refrigeration charges under attack were not unreasonable. Complaint dismissed. Montrose & Delta Counties Freight Asso. v. D. & R. G. R. R., 34 I. C. C. 400.

(3c) The Commission granted a rehearing in 29 I. C. C. 405, involving the reasonableness of rates on fuel oil, refined oils and engine distillates from producing points in California, Kansas, and Texas to all points in Arizona. PACIFIC CREAMERY CASE: Complainant attacked the fuel oil rates from California to Creamery and Gilbert, Ariz. The rate was $6 per ton from both Bakersfield, 501 miles, and Los Angeles, 440.5 miles, to Creamery. Shipments via the short line from Bakersfield, yielded 9.8 mills per ton-mile and 38.3c per car mile. The rate on slack coal, competitive with fuel oil, from Gallup, N. Mex., to Creamery was $3.05 per ton, minimum 90,000 lbs., yielding 7 mills per ton-mile and 31.5c per car-mile, for 429.8 miles. HELD that the $6 rate on Fuel Oil was excessive, and that rates from Los Angeles and Bakersfield to Creamery should not exceed $5 and $5.50 respectively. Reparation denied. ARIZONA CORPORATION COMMISSION CASE. Complainant attacked generally the rates on fuel oil, distillate, and refined oils to all points in Arizona from all producing points east and west thereof. FUEL OIL: Of this 96 per cent consumed in Arizona was by the mines. Rates were as follows:

In 1913 the S. P. Co. hauled 329,038 tons from California to Arizona, on which it delivered an annual revenue of $6.54 per ton and 8.04 mills per ton mile for 800.9 miles. HELD that the rates from the California fields were unreasonable, and following rates prescribed. From Bakersfield to Tucson, Douglas, Jerome Junction, and Phoenix, $5.50, $5.75, $5.50 and $5.50, for distances of 671, 799, 420, and 492 miles. REFINED OILS: Rates from each of the producing territories concerned as follows:

To	From Los Angeles Cal.	From Gates, Texas	From Beaumont, Texas	From Coffeyville, Ks.
Yuma	$10.60	$29.60	$31.60	$29.60
Phoenix	16.60	24.40	26.60	24.40
Mesa	16.60	24.40	26.60	24.40
Hayden	21.00	28.20	30.40	28.20
Tucson	16.60	21.00.	26.60	24.40

In 1913 the S. P. Co. hauled into Arizona 5980 tons at an average rate of $18.86 per ton, 2.7c per ton-mile, and 59c per car mile, for 698 miles. HELD that the rates on refined oils were unreasonable, and that rates which would yield practically the same per car revenue as the fifth class rate for the same distance should be established. DISTILLATE: Was worth at the wells about 6c per gallon, as compared with 15c to 20c for gasoline. It loaded heavier; about 25.6 tons per car. HELD that the rates on distillate should not be more than 80 per cent of those on refined oils. Pacific Creamery Co. v. S. P. Co., 34 I. C. C. 586.

(3d) Complainant attacked the rates on sugar and syrup in straight and mixed carloads from producer and refining points in California to all points in Arizona as unreasonable. Subsequent to hearing substantial reductions were made in the rates. On shipments from Los Angeles, Cal., to Kingman, Flagstaff, Prescott, Yuma, Tucson, Nogales, and Phoenix, Ariz., sugar rates of 72, 92, 66, 83, 90, and 83c existed prior to Mar. 15, 1914, when rates of 60, 60, 75, 60, 60, 82,

To	From Bakersfield rate per ton	miles	Gates, Tex. rate per ton	miles	Beaumont, Tex. rate per ton	miles	Coffeyville, Kans. rate per ton	miles
Tucson	$6.00	671	$ 8.00	952	$ 8.00 $ 9.60	1225	24.40	1392
Douglas	6.25	799	4.60	857	5.30	1130	7.00	1297
Jerome Junc.	6.00	420	24.40	1229	26.60	1502	24.40	1295
Phoenix	6.00	492	24.40	1074	26.60	1347	24.40	1405

and 75c; further reduced on Nov. 15, 1914, to 55, 55, 70, 53, 77, and 70c. Corresponding reductions had been made in rates on syrup. HELD: (1) Except as to Phoenix and Prescott, the evidence did not show that the rates in effect at the hearing on sugar and syrup in straight carloads, minimum 36,000 lbs. were unreasonable to a greater extent than the amount of the reductions since made; (2) Rates to Phoenix and Prescott ordered to be established upon a basis of not more than 5c higher than the rates to junction points; (3) no finding made as to rates on sugar and syrup in mixed carloads. Arizona Corp. Comm. v. A. T. & S. F. Ry., 34 I. C. C. 158.

§4. Competition.

See Competition.

§4. (1) In General.

(a) Complainant attacked the rates of $1 on coal to Nashville, Tenn., from western Kentucky mines on the L. & N. Ry., and the I. C. Ry., average distances of 108.5 and 167 miles, yielding 9.2 mills per ton-mile on the shorter haul, and from eastern Tennessee and Alabama mines via the N. C. & St. L. Ry., average distance of 140 miles, as unreasonable and discriminatory compared with the rates to Chattanooga, Knoxville and Memphis Tenn., Louisville and Covington, Ky., Cincinnati, Ohio, and East St. Louis, Ill. Owensboro, Ky., is 30 miles east of Henderson, Ky., both being on the Ohio River between Louisville and St. Louis. South of Henderson the L. & N. Ry. line from St. Louis extends to a point within a few miles of Nashville, where it connects with the main line from Louisville. The Owensboro division runs southeast to a few miles beyond Russellville, Ky. Leaving the main line at Memphis Junction, Ky., the Memphis division runs due southeast to Memphis, intersecting the Owensboro division at Russellville and the Henderson division at Guthrie. Coal from the Henderson division moves through Guthrie direct to Nashville; from the Owensboro division it moved to Russellville, thence 18 miles over the Memphis division to Guthrie, and thence to Nashville over the same route as shipments from Henderson. Coal also moves from both these division to Memphis, the route up to Guthrie being identical with Nashville shipments. For 25 years the rate on steam coal from western Kentucky over the L. & N. R. R. to Nashville had remained unchanged, though in the meantime car capacity had increased from 16 to 41 tons, tractive power of engines from 660 to 1,165 gross tons, and the volume of traffic from 193,000 to 450,000 tons. A comparison on ton, car and train mile basis of the rates to Nashville with those obtaining north of the Ohio River, with rates to St. Louis, Louisville, Cincinnati, Memphis and other points on the Mississippi and Ohio rivers from mines in Kentucky, Tennessee and Virginia, showed that in all cases the rate to Nashville yielded the greatest earnings. From the Kentucky fields to Memphis the rate was $1.10 per ton, yielding a per ton-mile revenue of less than 4 mills, for a distance of 276 miles, the tractive power of locomotives averaging 1,200 gross tons. The L. & N. R. R. charged only 10c per ton more when the additional haul beyond Guthrie was 276 miles to Memphis than when it was 49 miles to Nashville. It appeared that water competition at Memphis was no longer effective, and that the tonnage of the L. & N. R. R. was not affected by rail competition. It also appeared that railroad competition was equally as keen at Nashville. The rate from the Kentucky fields to Louisville, 142 miles via the L. & N. R. R. and L. H. & St. L. R. R., and 125 miles via the I. C. Ry., was 60c; and here also water competition was not an important factor. Comparing the average carload of 41 tons on the L. & N. R. R. and 34.5 tons on the N. C. & St. L. R. R., the car earnings were $41 and $34.50, and the per-car-mile earnings, 37.78c and 24.64c, respectively; or 18.89c and 12.32c for the loaded and empty movement, as against average per-car-mile revenue for all traffic of 10.54c for the L. & N. R. R. and 10.8c for the N. C. & St. L. R. R. The car-mile earnings of the I. C. Ry. and the Tennessee Central, connecting with Nashville, on coal, were also greatly in excess of the average car-mile earnings on all traffic. This route not only embraced two distinct carriers, but was 58.5 miles longer than the L. & N. R. R. from the same field and 27 miles in excess of the N. C. & St. L. haul from eastern Tennessee and Alabama. The present rate of $1.10 to Memphis became effective April 1, 1911, and is an advance of 10c over the rate obtaining during the preceding nine years. There is rail competition at Memphis, but it does not affect L. & N. R. R. tonnage. At Louisville, also, rail competition is the main factor.

The L. & N. R. R., with a 17-mile longer haul, must meet the I. C. Ry. rate, while the latter relies almost entirely on the river competition in differentiating conditions at Louisville and Nashville. HELD, that the existing rate to Nashville from western Kentucky mines over the L. & N. Ry. is unreasonable, and that the same is true as to the N. C. & St. L. Ry. rate from Tennessee and Alabama mines to Nashville. Rates reduced from the average yielded 60 barrels per acre, usually sold f. o. b. shipping station at $2 per barrel of 155 lbs., loading 150 to 185 barrels to the car. Markets varied from year to year, depending upon the success or failure of crops in the different fields and the law of supply and demand. RATES TO CENTRAL FREIGHT ASS'N TERRITORY: The following table was illustrative of the rate situation

From	To Chicago Illinois		To Cincinnati Ohio		To Indianapolis Indiana		To Cario Illinois		To Detroit Michigan	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Rochester, N. Y. ------	573	21.1	509	19.2	535	20.5	812	26.5	301	17.2
Portland, Me. --------	1066	31.5	989	27.4	1028	29.3	1330	37.8	794	24.6
Hagerstown, Md. ------	695	28.5	481	24.4	591	26.3	868	34.8	548	21.6
Dover, Del. ----------	896	31.5	711	27.4	809	29.3	1086	37.8	744	24.6
Chambersburg, Pa. ----	729	28.5	515	24.4	663	26.3	902	34.8	582	21.6
Lynchburg, Va. --------	748	26.5	470	23.4	580	24.7	805	32.8	611	21.6
Winchester, Va -------	747	28.5	530	24.4	640	26.3	912	34.8	599	21.6

$1 to 80c, and 90c per ton, respectively. Complaint as to unreasonableness of the Illinois Central-Tennessee Central not sustained. Traffic Bureau of Nashville, Tenn., v. L. & N. Ry. Co., 28 I. C. C. 533

(b) Complainants attacked the rates on apples in carloads from producing points in Virginia, West Virginia, Maryland, Delaware, and Southern Pennsylvania to various sections of the country, as unreasonable and discriminatory compared with rates from New England and western New York. Intense cross-country competition characterized the southern field, many orchardists having access to stations on two or more lines, and this competition was reflected in the rate adjustments. In official and western classifications, apples were rated fifth class, in southern, sixth class; class rates applying except to the southeast, to which commodity rates prevailed. In the southern neld bearing orchards on the average yielded 60 barrels per acre, usually sold f. o. b. shipping station at $2 per barrel of 155 lbs., loading 150 to 185 barrels to the car. Markets varied from year to year, depending upon the success or failure of crops in the different fields and the law of supply and demand. RATES TO CENTRAL FREIGHT ASS'N TERRITORY: The following table was illustrative of the rate situation

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Winchester, Va -------	747	28.5	530	24.4	640	26.3	912	34.8	599	21.6

These were fifth class rates made with reference to the New York-Chicago rate standard, or 100 per cent. The Rochester rate had been depressed by water competition. In general, the rates from the southern territory had been established to meet competition of northern trunk lines. RATES TO SOUTHEASTERN TERRITORY: The folowing table is typical:

From	To Atlanta Georgia		To Augusta Georgia		To Birmingham Alabama		To Bristol Tennessee		To Jacksonville Florida	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Rochester, N. Y. --	1,002	42	965	37	995	42	771	38	1,149	36½
Portland, Me. -----	1,226	42	1149	37	1340	42	955	39	1333	37
Hagerstown, ------	730	35	653	30	844	35	390	34	832	32
Chambersburg, Pa. -	751	40	674	35	865	40	411	34	853	32
Lynchburg, Va. ----	475	31	398	22	589	31	204	15	641	32
Winchester, Va. ----	658	40	581	35	734	40	383	34	820	32
Staunton, Va. ------	560	34	483	25	674	31	289		726	35

The rates to Augusta and Savannah, Ga., and Jacksonville, Fla., were depressed by active water competition, which also affected the rates to many interior points. RATES TO CAROLINA TERRITORY: The following table is typical: (See Table A, Page 312.)

Southern Classification sixth class, any quantity rates, applied generally from all territories of origin to North Carolina points; while to South Carolina points commodity rates affected by water competition obtained. RATES TO GULF PORTS AND MISSISSIPPI VAL-

TABLE A—RATES TO CAROLINA TERRITORY

From	To Charlotte, N. C.		Greensboro N. C.		Wilmington N. C.		Greenwood S. C.		Charleston S. C.		Sumter S. C.	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Rochester, N. Y. ____	774	42	681	38	754	27	892	43	905	31½	920	45
Portland, Me. _____	958	46	865	42	938	29	1076	47	1089	32	1104	49
Hagerstown, Md. ____	444	37	358	33	437	21	562	39	588	25	590	40
Winchester, Va. _____	386	37	293	33	473	25	504	39	624	25	532	40
Lynchburg, Va. _____	207	25	114	21	294	15	325	31	445	25	353	32
Staunton, Va. _____	305	28	251	24	431	18	423	34	478	28	451	35

LEY TERRITORY. Typical rates were as follows:

From	To Jackson Miss.		Vicksburg Miss.		Greenwood Miss.		Meridian Miss.		Corinth Miss.		New Orleans La.	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Rochester, N. Y. ____	1243	50	1287	41	1231	49	1147	4[illegible]	1069	51	1349	47
Portland, Me. _____	1588	64	1627	44	1576	58	1492	43	1414	52	1722	50
Hagerstown, Md. __	1023	61	1067	41	1011	55	927	40	849	49	1129	47
Chambersburg, Pa. _	1044	61	1088	41	1032	55	948	40	870	49	1150	47
Lynchburg, Va. ____	837	61	881	41	825	49	741	40	663	55	971	43
Staunton, W. Va. ___	893	61	937	41	881	49	796	40	720	55	998	43

Routes from New York points to the Ohio River controlled traffic from producing territory in New York to the destinations, unaffected by lines from complaining territory, whose rates were as a rule no higher than the all-rail rates from Baltimore. RATES TO THE SOUTHEAST. To points west of the Mississippi River on traffic from New York and New England, the lowest combination on the river crossings generally applied; while from Virginia points Raleigh territory rates applied to the crossings, resulting in lower total rates than the lowest combination basis would yield. HELD, that, except in minor instances, neither unreasonableness nor unjust discrimination in the rates complained of had been shown. Complaint dismissed. Eastern Fruit Growers' Asso. v. B. & O. R. R., 33 I. C. C. 343.

§4. (3) Rail-and-Water Competition.

See Rail-and-Water Competition.

(a) In 32 I. C. C., 471, the Commission held that respondent had not justified higher rates to and from Quincy, Ill., Hannibal and Louisiana, Mo., and points in trunk line and central freight association territories than were in effect between St. Louis, Mo., and the same points. On rehearing, it appeared that while St. Louis rates were based on mileage scales the carriers maintained minimum rates between points east of the Indiana-Illinois state line and the three points first named, negativing an equality of rates. First class rates between Indianapolis, Ind., and the crossings at St. Louis, Quincy, Hannibal and Louisiana were 38, 43, 43 and 44c for distances of 240, 304, 293, and 290 miles. HELD, it was not the intention of the Commission to establish a parity of rates between the lower crossings where such relation was not already in existence. Order so modified as to require maintenance of such relationship in rates to and from points east of the Indiana-Illinois state line and the lower crossings as had been in effect prior thereto. Class and Commodity Rates to and from Quincy, Ill., and Groups, 33 I. C. C., 409.

§4. (4) Water Competition.

See Water Competition.

(a) If rail carriers be permitted to establish their rates in connection with water carriers upon a basis which will equalize shippers at various points along the waterway, they will absorb the benefit which should accrue to the public of the lower cost of water transportation. Bituminous Coal Rates to Baltimore and Other Cities, 33 I. C. C. 307, 316.

(b) The Commission cannot prescribe a rate to equalize for Alexandria, La., advantages enjoyed by jobbers at competing points who move their canned goods to Port Arthur, Tex., on low rates offered by tramp steamers, and reship by rail to destination. Alexandria Traf-

fic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955.

§4. (5) Market Competition.

See Supra, §6; Market Competition.

(a) While the Commission does not advocate the making of freight rates with relation to the selling price of a commodity, at the same time when the carriers by their own action have established such a practice, it is but fair to assume that the rates charged during periods of unusual prosperity were sufficiently above the normal to make up any decrease in profits sustained during leaner years. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 600.

(b) The tendency of grain grown between two lines of railroad to move toward the line offering the lower rate is recognized. But the fact standing alone, that competition exists between dealers located on two lines of railroad is insufficient to warrant an order requiring the carriers to so readjust their rates as to place these competitors upon an equality. Nebraska State Ry. Comm'n v. U. P. R. R., 34 I. C. C. 381, 382.

§6. Preference of Markets.

See Market Competition.

(a) Complainant attacked the rates on logs, lumber and articles taking lumber rates, from points in Tennessee, Alabama, Mississippi, Louisiana and that part of Arkansas lying on and to the south of the line of the C. R. I. & P. Ry., from Memphis, Tenn., to Little Rock, Ark., to Metropolis, Ill., and the transit rates on logs as unreasonable and discriminatory, compared with rates from equidistant points to Cairo, Ill. Metropolis is north of the Ohio River, 12 miles west of Paducah, Ky., and 6 miles by rail from Brookport, Ill.; traffic from Paducah to Metropolis being transported by car ferry to Brookport, and thence by rail. Where through rates were published, they were the same to the three points, the expense of crossing the river and the rail transportation to Metropolis not being added to the rate to Paducah. In connection with the transit rates on logs, the I. C. R. R. charged from its stations to both Brookport and Metropolis an arbitrary of 2c over the rates to Paducah, ignoring the 6-mile haul, Brookport to Metropolis. Outbound rates on lumber from Cairo, Chicago, Indianapolis and Cincinnati were the same, while the rates from Paducah were 2c higher. In 29 I. C. C. 583 a difference of 1c per 100 lbs. was fixed as reasonably compensatory for the additional service performed northbound in crossing the river from Paducah, the Commission thus reducing to 1c the spread in the outbound rates from Paducah as compared with Cairo, Brookport and Metropolis. The I. C. Ry. tariffs provided that logs to be milled at Cairo, Brookport, Paducah and Metropolis should be waybilled and charges collected at full local rates to milling points and when the manufactured product is shipped out via the I. C. R. R., the inbound charges should be reduced to certain specified net mileage rates. The latter applied to East Cairo and Paducah, and in constructing the net rates arbitraries of 1c and 2c, respectively, were added. The average loading of cars moving through Paducah to Metropolis was 45,000 lbs., a charge of 1c, yielding $4.50. HELD, that such adjustment subjected Metropolis to undue prejudice in favor of Cairo; that the rates on logs and lumber to Metropolis from equidistant points east of the Mississippi River should not exceed contemporary rates to Cairo, and from points west of the Mississippi River such rates should be not more than 1c per 100 lbs. higher than Cairo rates. Ordinarily a local rail haul is entitled to consideration, but in this case the carrier by its own action in assessing the same arbitrary over the Paducah net mileage rates on shipments to Metropolis and to Brockport and by charging the same rates on lumber from Metropolis as from Cairo, precludes the defense that the excess of 1c over the Cairo rates is justified by the additional rail haul. The imposition of higher charges for transportation from Paducah to Metropolis, in connection with transit privileges at the latter point, than those exacted for transportation from East Cairo to Cairo, on products to be milled in transit at Cairo, is discriminatory as against Metropolis. Metropolis Commercial Club v. I. C. Ry. Co., 30 I. C. C. 40.

(b) Carriers cannot be expected to equalize the rates from all producing communities nor to remove disadvantages resulting from location, but competition from producing points to a com-

mon market and the resulting advantage to the public and to the carriers, is a fact that may well be considered when it is sought to change a rate adjustment which the carriers themselves have made. Class and Commodiy Rates from Stations in Maine, 31 I. C. C. 18, 21.

(c) Complainant attacked the interstate second, third, fourth and fifth class rates from Pueblo to Durango, Colo., of $1:25, $1.05, 75c and 60c for 119 miles, as unreasonable and discriminatory compared with identical rates from Denver to Durango, 452 miles. A differential existed between all other class rates from Pueblo and Denver to Durango; but 90 per cent of the merchandise freight from Pueblo moved under the rates mentioned. The identity of rates gave Durango merchants the advantage of buying in competitive markets, but did not subject Pueblo shippers to disadvantage, they having an advantage in time of twelve hours. They were established pursuant to defendant's policy of making its rates to territory in proximity to distributing points less therefrom than from more distant jobbing points, and to equalize between the distributing and jobbing points rates to points beyond such local territory; a practice also followed by the A. T. & S. F., C. & S., C. R. I. & P. and M. P. R. Rs. Thus Pueblo was given the same rates as Denver to points in Wyoming and Nebraska from which it was 119 miles more distant. HELD, that Pueblo was not unduly prejudiced within the meaning of the Act. Complaint dismissed. Pueblo Commerce Club v. D. & R. G. R. R. Co., 31 I. C. C. 133.

§7. Size of Community.

(a) Complainant attacked the class rates between Freeport and Rockford, Ill., and points east of the Illinois-Indiana state line as discriminatory, unjust and unreasonable. The rates to these points were on a basis of 117 per cent, respectively of the New York-Chicago rates, giving 92.2c and 91.4c scales to and from New York. The 117 per cent basis extended to Dubuque, Iowa. The distance from Freeport was 112.5 per cent and from Rockford 109.5 per cent of the New York-Chicago distance. From Chicago to Rockford was 85 miles, to Freeport 113 miles and to Dubuque, 182 miles. From New York to Chicago, Decatur and Peoria, Ill., and Burlington, Ia., for distances of 912, 978, 1006, and 1102 miles, the percentage bases were 100, 110, 110, and 117, and the first-class rates 78.8, 86.7, 86.7, and 92.2c. The first-class through joint rate, New York to Freeport was 15.8c less, and to Rockford 17.3c less, than the combination on Chicago to Freeport. The rate from Freeport to New York produced 17.6 mills per ton-mile; from Rockford, 17.5 mills. Freeport and Rockford were on the northern boundary of prorating territory. HELD, that the class rates between Freeport and Rockford and points in central freight assn., trunk line and New England territories were discrimmatory, and that the Rockford rates were unjust and unreasonable. With the rates at the upper Mississippi River crossings fixed at 117 per cent and at Peoria on a 110 per cent basis, those at Freeport and Rockford should be 114 per cent and 112 per cent or on an 89.8c and 88.3c scale. Chamber of Commerce Freeport, Ill., v. C. M. & St. P. Ry., 33 I. C. C., 673.

III. EFFECT OF EQUALIZATION.

§8. Adjustment of Related Rates.

See Evidence, §66; Relative Rates.

(a) Deprivation of city of rates on percentage principle held not to be justified. Rates on Potash and Other Commodities, 29 I. C. C. 626, 627.

(b) Principle of percentage rates between East and Central Freight Association Territory has been uniformly approved. Rates on Potash and Other Commodities, 29 I. C. C. 626, 628.

(c) Complainant attacked the class and commodity rates from trunk line and central freight association territory to Aurora, and to Batavia, Geneva and St. Charles, Ill., intermediate points, as unreasonable and discriminatory compared with the rates to Joliet and Peoria, Ill. First-class rates from New York, N. Y., to Aurora, Joliet and Peoria were 80c, 75c and 83c for distances of 949, 924 and 1007 miles; being respectively 107, 100 and 110 per cent of the 75c rate to Chicago, Ill., distant 914 miles from New York. Movements to points in the Aurora group involved an additional carrier west of Chicago, while Joliet and Peoria were reached by carriers having a continuous line from points of origin. HELD, that each point could be given rates which bear the exact proportion to

the rates to Chicago which its distance from New York bears to the distance to Chicago from New York. Defendants held to have shown existing rates to be reasonable and not unduly discriminatory. Complaint dismissed. Fox River Valley Mfrs. Asso. v. M. C. R. R. Co., 32 I. C. C. 547.

(d) The car-mile earnings of carriers on all traffic compared with similar earnings on coal shipped from and to the points involved and other computations made on similar bases are proper to be considered and should be given due weight in reaching a conclusion as to the reasonableness of coal rates. San Toy Coal Co., v A. C. & Y. Ry., 34 I. C. C., 93, 98.

EQUIPMENT

See Cars; Evidence, §22; Facilities and Privileges.

ERIE CANAL

See Evidence, § 14 (5), (z).

ERRONEOUS RATE

See Advanced Rates, §5 (6); Evidence, §22¼; Passenger Fares and Facilities, §15; Reconsignment, §3, (l), §7 (a); Reduced Rates, §5 (c); Reparation, §7½ (g), §8; Tariffs, §3 (2), §7 (y); Through Routes and Joint Rates, §13 (gg), §15 (z), §15 (cc), §22 (f).

EVIDENCE.

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§2½. Additional service.
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§4. Averages.
§5. Basing-point system.
§5½. Back haul.
§6. Bona-fide investment.
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(1) In general.
§13. Comparisons of rates.
(1) In general.
(2) Divisions and joint rates.
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(2) Potential.
(3) Railroad.
(4) Rail-and-water.
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§24. Fixed charges.
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§31½. Maps.
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§33. Merger of terminals.
§34. Mineral lands owned by carrier.
§34½. Motives.
§35. Municipal charter.
§36. Need for revenue.
§37. New lines.
§38. New rates.
§39. Notice.
§40. Oral testimony.

§40½. Origin of traffic.
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§56½. Statistical tables.
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CROSS REFERENCES

See Act to Regulate Commerce, I (b); Advanced Rates, III; Blanket Rates, VII; Discrimination, §5½ (a); Express Companies, VII; Long and Short Hauls, §12; Loss and Damage, III; Passenger Fares and Facilities, §5 (c); Procedure Before Commission, VII; Reasonableness of Rates, II; Refrigerat.on, §4 (f); Water Carriers, V; Weights and Weighing, IV.

I. BURDEN OF PROOF.

§1. In General.

See Demurrage, §2 (e).

(a) It is the duty of the Commission to examine the rates themselves, their relationship one to another, their effect, and to determine under all the circumstances what is the just, the reasonable, and the lawful thing to do. Rates to North Carolina Points, 29 I. C. C. 550, 557.

(b) Class rate applicable to plows from Coldwater, Miss., to Memphis, Tenn., higher than commodity rate to Memphis from Atlanta and other points. No witness, however, introduced to testify as to the conditions under which rates to Memphis are established. Evidence in record insufficient to warrant finding of rates unreasonable. Orgill Bros. & Co. v. I. C. R. R. Co., Unrep. Op. A209.

(c) It is unlawful to charge a rate so low as to be non-compensatory or impose a burden upon other traffic. Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 15.

(d) Strict rule of evidence, shifting burden of proof, where defendant fails to rebut evidence of complainant, not applied. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 435.

(e) In the absence of proof as to cost of service or of similarity in circumstances and conditions governing other rates that are higher, it cannot be said that a certain rate is abnormally low. Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 145.

(f) The evidence to support a complaint which involves rate adjustments and rate-making principles of importance should be clear, adequate and convincing. Rosenblatt & Sons v. A. A. R. R. Co., 33 I. C. C. 324, 326.

(g) In a proceeding involving the propriety of existing rates the burden of proof is upon the complainants. Rosenblatt & Sons v. A. A. R. R. Co., 33 I. C. C. 324, 329.

(h) Carriers not relieved from necessity of sustaining burden of proof even though rates were published through error. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 256.

II. CIRCUMSTANCES AND CONDITIONS OF PROBATIVE VALUE.

See Advanced Rates, §18; Equalization of Rates, II; Long and Short Hauls, §12 (2); Reparation, III.

§1½. In General.

(a) Concessions ought to be eliminated before roads are permitted to make general rate increase. Industrial Railways Case, 29 I. C. C. 212, 218.

(b) Transportation of lake cargo coal is dissimilar to that which obtains with respect to valley coal. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 433.

(c) Two water miles reckoned as one rail mile, New York, Philadelphia and Baltimore to Norfolk; three for one to more southern ports. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 490, 494.

(d) It is a maxim of rate making that the rate should be such, if possible, as to move the traffic. Minneapolis Civic & Commerce Asso. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 671.

(e) Each case before the Commission stands upon its own facts. Allentown Portland Cement Co. v. P. & R. Ry. Co., 31 I. C. C. 277, 280.

(f) In fixing new rates or in considering those already established the Commission usually adheres to the plan of rate making followed by the carriers. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 568.

§2. Advantage of Location.

See Discrimination, §9; Equalization of Rates, §3; Reasonableness of Rates, §19.

(a) Duluth and the Twin Cities are fairly entitled to every rate advantage that their proximity to the Great Lakes may fairly give them. Transcontinental Rates from Group F, 28 I. C. C. 1, 4.

(bc) Natural disadvantages of Carrollton and its lack of facilities for competitive transportation should not be magnified unduly and should not be allowed to obscure its right to reasonable rates. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 168.

(d) Louisville's position on the Ohio River, as a railroad center, operates to give it rates which Lebanon may not reasonably claim. Lebanon Commercial Club v. L. & N. R. R. Co., 28 I. C. C. 301, 303.

(e) While towns may be prosperous by virtue of their location they are entitled to compete for local trade, and may be greatly handicapped by a discriminatory rate adjustment. Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433, 437.

(f) Douglas, Ga., is at a material disadvantage in the competition for the business of the region tributary to it and its neighboring rivals. It may not justly be denied relief from the handicap under which it labors, because of the circumstance that up to the present it has done well in spite of the handicap. Mayor and Council of Douglas v. A. B. & A. R. R. Co., 28 I. C. C. 445, 450.

(g) Carriers have recognized the advantage of St. Louis' location on the Mississippi River in the rates on sugar, but have denied her this advantage of location with respect to the rate on coffee. Traffic Assn. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 486.

(h) Rates from the East to Springfield are approximately 6 per cent higher than to Peoria. It was testified under these circumstances industries have been unable to locate at Springfield. Such a disadvantage in transportation charges must certainly be a serious handicap to any locality. Springfield Commercial Assn. v. P. R. R. Co., 28 I. C. C. 511, 514.

(i) Geographical location of Memphis is not such as to warrant a differential in favor of St. Louis of 16 cents in the rates on imported burlap from New York. Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547.

(j) Amarillo's disadvantage found to be due to its location. Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I. C. C. 594, 596.

(jj) Difference of cities in population, wealth, bank clearings, capitalization, deposits, industrial and manufacturing operation, including the capitalization of plants, the value of materials used, value of products, number and compensation of employes, extent of wholesale and jobbing business, and geographical position, can carry weight only to the extent to which a definite relation between them and freight rates can be shown. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 480.

(k) Contention by complainant that it must pay higher freight charges on raw materials originating in the East and used in the manufacture of beer at La Crosse than its competitors at Chicago and Milwaukee should be considered in making a rate on its product to Chicago, is untenable. Commission cannot equalize geographical advantages or disadvantages between different localities. Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A233.

(l) Contention by complainant that it must pay higher freight charges on raw materials originating in the East and used in the manufacure of beer at La Crosse than its competitors at Chicago or Milwaukee should be considered in making a rate on its products to Chicago, is untenable. Commission cannot equalize geographical advantages or disadvantages between different localities. Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A233.

(m) Virginia cities entitled to advantages of their location on strong lines and high traffic density. Rates to North Carolina Points, 29 I. C. C. 550, 557.

(n) A city is entitled to the benefits of its geographical location. Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458, 461.

(o) Fact that jobbing situation is controlled by outbound rates from jobing points is no justification for depriving any locality of just and reasonable inbound rates. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515.

(p) Advantages of location and proximity to markets should not be disturbed by fixing rates predicated upon cost of production. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 601.

(q) Nature has unusually favored Birmingham by placing at its doors all the raw materials necessary to the manufacture of pig iron. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 601.

(r) Relationship of rates between Chattanooga and Macon is result of commercial rather than transportation conditions. Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., Unrep. Op. A-676.

(s) Nashville entitled to benefits of its natural location upon the water; but existing conditions do not justify higher rates on coffee from New Orleans to Birmingham than to Nashville. Merchants' & Manufacturers' Asso. of Birmingham v. L. & N. R. R. Co., Unrep. Op. A-680.

(t) It could hardly be claimed that the Commission should arbitrarily localize an industry through the instrumentality of a rate. Nebraska State Railway Comm. v. C. V. Ry. Co., 32 I. C. C. 41, 46.

(u) All shippers alike pay an additional charge for terminal service, and port compressors and merchants enjoy no other advantage to which their location does not justly entitle them. Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 147.

(v) St. Louis and Memphis are entitled to any advantages they may derive from their location on the Mississippi River. Chamber of Commerce, Houston, Tex. v. I. G. N. Ry. Co., 32 I.C. C. 247, 251.

(w) Pacific coast deep water terminals are entitled under the law to all the advantages of their geographical locations. Trans-Continental Commodity Rates, 32 I. C. C., 449, 455.

(x) Differences in industrial and traffic conditions in official and in western classification territories are such that rates in the territory west of the Mississippi River may reasonably be made higher than in the more densely populated east. Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582, 587.

(y) Nevada territory entitled to benefit of its location on main line of railway, of high traffic density and efficiency. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625.

(z) Panama Canal gives to coast cities a greater advantage over interior points that is not natural, but artificial. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 632.

(aa) Commercial advantages and disadvantages not factors that can have any great consideration in reaching conclusions as to propriety of rate structures. Illinois Coal Cases, 32 I. C. C. 659, 673, 674.

(bb) Mining wage scales take into consideration location of mines. Illinois Coal Cases, 32 I. C. C. 659, 667.

§3. Agreed Facts, Admissions and Agreements.

(a) The statement in printed briefs that certain facts have been agreed upon, does not establish such facts in such manner as to justify the issuance of an order thereon. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 396.

(b) Agreement to reduce rate not sufficient for an award of reparation on shipment made prior to such reduction. Erickson Co. v. C. & N. W. Ry. Co., Unrep. Op. A272.

(c) Agreement between carriers and shippers as to what road should receive long haul cannot be determinative of the reasonableness of rate. Straw Rates from Stations in Missouri, 29 I. C. C. 562, 563.

(d) Assumption of burden of proof by complainant regarded as an admission that statute does not apply. Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 536.

(e) Case predicated upon an agreement between carrier and lumber company, and Commission is not authorized to administer a remedy where application for relief is based solely upon a contractual relationship between parties. Alexandria Lumber Co., Ltd., v. L. R. & N. Co., Unrep. Op. A-710.

§5. Basing-Point System.

See Basing Points and Lines.

(a) A point directly intermediate to the base point, upon which the lowest combination makes a rate no higher than such combination, must be maintained, and it is not necessary in such cases to haul the shipment to the base point and back again to destination. Tusten Seed & Produce Co. v. V. S. & P. Ry. Co., Unrep. Op. A442.

§5½. Back Haul.

See Back Haul.

(a) No manipulation of tariffs can justify the hauling of freight from the point of origin to a certain point and then back in the reverse direction through the point of origin to destination. Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609, 619.

(e) Bill of lading contained the following clause: "Hold Chicago for inspection. Allow inspection." The shipment was not held and the shipment reached its original destination before reconsignment instructions were received; therefore a back haul was required. HELD, charges collected were not unreasonable. Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A462.

(c) Where a back haul from Coffeyville to Parsons, Kan., was performed by the carrier for its own convenience, a charge for such service was unreasonable. Reparation awarded. Rea-Patterson Milling Co. v. M. K. & T. Ry. Co., Unrep. Op. A-653.

(d) The back-haul charge may be looked upon in some respects as similar to a proportional rate applicable to the movement of traffic between two points when coming from or destined to a more distant point. A proportional rate is ordinarily less than the local rate in the recognition of the fact that the traffic has already paid or will subsequently pay a further transportation charge. Commodity Rates to Pacific Coast Terminals, 32, I. C. C. 611, 632.

(e) The practice of making rates to points in back-haul territory by taking the rates to coast terminals and adding thereto the local rate from the terminal to destination, cannot be claimed to rest upon any just principle of rate making. It is merely an expedient for arriving at a rate. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 631.

(f) Demurrage and back-haul charges from Hammon, Okla., to Brinkman. Okla., on part carload of farm wagons, originating at St. Louis, Mo., due to shipment being rejected by consignee at stop-off point, not found unreasonable. Corporation Commission of Oklahoma v. W. F. & N. W. Ry. Co., Unrep. Op. A-828.

(g) Joint through rates on apples from Fort Royal, Va., to Jackson, Miss., exceeded combination of rates to Vicksburg, Miss., plus the local rate from Vicksburg back to Jackson. Reparation awarded. Wilson Produce Co. v. N. W. Ry. Co., Unrep. Op. A-905.

(h) Combination rates on coke from Bessemer, Ala., to Marshall, Tex., back hauled from Jefferson, Tex., under new bills of lading, not found unreasonable. Marshall Car Wheel and Foundry Co. v. T. & P. Ry. Co., Unrep. Op. A-929.

§6. Bona Fide Investment.

See Accounting, §3 (b); Advanced Rates, §2½ (l).

(a) In determining the charge to be made on account of capital, where there is a normal increase in traffic discernible beneath the annual fluctuations, with a growth in investment necessitated by expanding traffic, it is not fair to take the investment at the end of a five-year period as representative of the period as a whole. Lum. v. G. N. Ry. 33 I. C. C. 541, 556..

(b) Property investment accounts can not be accepted as accurately representing the fair value of property devoted by carriers to serving the public. Five Per Cent Case, 32 I. C. C. 325, 328.

(c) The government has from the beginning encouraged railroad construction and operation by private capital and enterprise. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 621.

§8. Car-mile or Train-mile Revenue.

See Reasonableness of Rates, §6.

(a) Larger number of passengers per train-mile more than recoups carrier for low fare per passenger per mile on excursion business. Carnegie Board of Trade v. P. Co., 28 I. C. C. 122, 128.

(b) Car earnings on coffee could be materially increased by heavier loading. Traffic Assn. of St. Louis Coffee Impoters v. I. C. R. R. Co., 28 I. C. C. 484, 486.

(c) Where the commodity moves in trainloads, the earnings per train-mile furnish the best criterion. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 535.

(d) Per-car earnings, with distance considered, are much more reliable than ton-mile statistics. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 535.

(e) While value of carload of tin cans is only a fraction of the value of carload of condensed milk, eastbound rate on tin cans produces car revenue which is materially less than westbound rate on condensed milk. Pacific Creamery Co. v. S. P. Co., Unrep. Op. A356.

(f) By reason of allowing use of car for loading of only 5000 lbs. the revenue per car is less on produce than on other class traffic and unloaded by carriers. Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 15.

(g) A comparison of carload earnings on two commodities is unconvincing where the average carloads of the commodities differ. Brantley Co. v. A. C. L. R. R., 34, I. C. C., 21, 24.

§9. Change in Conditions or Service.

See Advanced Rates, §7; Reasonableness of Rates, §7; Through Routes and Joint Rates, §20.

(a) An unusual number of changes or fluctuations in a scale of commodity rates seems to suggest the propriety of establishing and maintaining the rates in question on a class basis, in order that class principles and relationships may render them more stable. Western Lake and Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 55.

(b) If the Commission is to set rates that will afford reasonable remuneration to the carriers, it must give consideration to the increased hire of capital as well as to other increased costs. Five Per Cent Case, 32 I. C. C. 325, 330.

§10. Combinations to Fix Rates.

(a) While the Commission is not empowered to administer the anti-trust laws, it will not approve an elimination of competitive routes which would result in the creation of a monopoly. Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609, 618.

(b) Corporations which engage in a conspiracy to limit the output and fix the price of lumber to be shipped from one state and sold in another are amenable to the state anti-trust law, and cannot raise the plea that the acts alleged to have been done in contravention of law are the same acts over which the interstate commerce law applies. State v. Arkansas Lumber Co. (Mo. 1914), 169 S. W. 145, 171.

§12. Comparisons of Commodities.

See Classification, §17; Comparative Rates.

§12. (1) In General.

(a) Paper-stock rate which is accorded to manila paper was established to apply to all articles which enter into the manufacture of paper itself. Wrap-

ping paper, the product of a manufacturing operation, cannot properly be so classed. Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis., 28 I. C. C., 305, 307.

(bc) It is apparent that carriers are entitled to a somewhat higher rate for the transportation of brooms than would be justifiable for the transportation of broom corn. Broom Rates to Colorado Points, 28 I. C. C. 310, 312.

(d) The fact that there is a lower switching rate on excelsior wood is not sufficient to establish that the rate on beer between same points is unreasonable. East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427.

(e) Scrap-iron rates should not necessarily be fixed with a definite relation to the rates on pig iron or new rails. Scrap-Iron Rates Between Duluth and Chicago, 28 I. C. C. 467, 470.

(f) No reason why joint rates should not be maintained on cypress and yellow pine from points of origin on the Iron Mountain R. R., as well as on other lumber. Lumber Rates, Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 476.

(g) The Commission cannot find that because a lower rate was maintained on furniture and agricultural implements, the rate charged on incubators and brooders was unreasonable. Lee Co. v. I. C. R. R. Co., 28 I. C. C. 515.

(h) Ordinarily the rate on malt is the same as that upon grain products, and this is sometimes the same as the grain rate, and sometimes slightly higher. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 551.

(i) Discriminatory to force wagon wood and plow beams, in the rough, to bear higher rates than are imposed for like service upon many analogous manufactured wood articles which move at lumber rates. Sligo Iron Store Co. v. St. L. & S. F. R. R. Co., 28 I. C. C. 616, 618.

(j) Fuel oil may be used in place of coal, yet comparisons of this nature are not of great value. Fairmont Creamery Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 661, 662.

(k) Lower rate maintained from New Orleans on refined sugar, which is the most valuable product obtained from the cane, than on blackstrap, which is the residue of least value from the manufacture of sugar. Molasses Rates from Mobile, 28 I. C. C. 666, 670.

(l) Higher rates are charged on glucose than on other commodities that cannot be transported at so low a cost as glucose. National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 674.

(m) Rates on hewn oak ties should not exceed rate on oak lumber. Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701, 702.

(mm) A comparison of the rates on articles shipped with the rates on articles not analogous, is without value. E. Danciger v. P. C. C. & St. L. Ry. Co., 29 I. C. C. 99, 100.

(n) Peroxide of hydrogen compared with "cattle and sheep dip," barium and fluid disinfectants. Standard Pharmacal Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A111.

(o) Wooden sucker rods compared with single and double trees, made of similar materials. Nomsen v. P. C. C. & St. L. Ry. Co., Unrep. Op. A136.

(p) Pressed steel doors compared with steel plate doors. West Co. v. E. R. R. Co., Unrep. Op. A142.

(q) Caster bolts and shanks compared with bolts, screws, iron nuts, hooks, nails and iron castings. Faultless Caster Co. v. M. P. Ry. Co., Unrep. Op. A143.

(r) Caster rollers compared with iron castings, iron sprocket wheels, sheave and pulley castings. Faultless Caster Co. v. M. P. Ry. Co., Unrep. Op. A143.

(s) Unglazed tile slabs compared with roofing tile. Ludowici-Celadon Co. v. C. & N. W. Ry. Co., Unrep. Op. A144.

(t) Rates on cross-ties found unreasonable to the extent that they exceeded the rate contemporaneously applied to lumber. Reparation awarded. Deeves Lumber Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. A145.

(u) Complainant is not subjected to undue discrimination because there is a lower rate on cow or field peas than on California peas or lima beans. Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A148.

(v) Rates on volcanic ash from Ingham, Neb., to St. Louis, Mo., not found unreasonable as compared with rates on ground silica sand from Ottawa, Ill., to

St. Louis, Mo. Commercial Chemical Co v. C. B. & Q. R. R. Co., Unrep. Op. A149.

(w) Automobile axles not found entitled to same rating as carriage or wagon axles. Auto Vehicle Co. v. P. Co., Unrep. Op. A152.

(x) Automobile radiators used for cooling water after the explosion in gas cylinders, not found entitled to same rating as machinery n. o. s. Auto Vehicle Co. v. P. Co., Unrep. Op. A152.

(yz) Automobile steering gear and parts thereof not found entitled to same rating as machinery n. o. s. Auto Vehicle Co. v. P. Co., Unrep. Op. A152.

(aa) There is no objection to a reasonable differential between the rates on material and the manufactured products thereof. Plain sheet steel and corrugated sheet steel bear to a degree the relation of raw material and products. Rulofson & Co. v. P. Co., Unrep. Op. A153.

(bb) Rates on steel bars, from Johnstown and Pittsburgh, Pa., to Harriman, Tenn., found to be unjustly discriminatory as compared with rates on steel plate. Reduction ordered and reparation denied. Harriman Mfg. Co. v. S. Ry. Co., Unrep. Op. A164.

(cc) Allegation that air-brake equipment is entitled to same rating as "brakes and fastenings," not sustained. National Brake & Electric Co. v. C. & N. W. Ry. Co., Unrep. Op. A171.

(dd) Higher rate in effect on oak than gum lumber. Tariff filed to correct this disparity, but suspended by Commission. Leavitt Land & Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A174.

(ee) One and one-half times first-class rate applied to shipments of iron automobile frames found unreasonable in that it exceeded second-class rate applicable to fly-wheels, cranks, shafts, chains, n. o. s., brake drums, springs, axles (without gear), and iron and steel axle housings. Keats Auto Co. v. S. P. & S. Ry. Co., Unrep. Op. A202.

(ff) Higher rate on barley than on malt from Minneapolis, Minn., to Kansas City, Mo., held to be unduly prejudicial. Kansas City Breweries Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-214.

(gg) Classification of coffin stock found to be relatively unreasonable and unduly prejudicial, and should not exceed rating on lumber. Board of R. R. Com'rs of Iowa v. A. T. & S. F. Ry. Co., Unrep. Op. A-222.

(hh) Combination rate on gum lumber exceeded joint rate in effect on cypress lumber. HELD, unreasonable, and reparation awarded. Lyon Cypress Lumber Co. v. Y. & M. V. R. R. Co., Unrep. Op. A-224.

(ii) Contention that rate on empty beer packages returned should be from 50 to 75 per cent of rate on beer not sustained. Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-233.

(jj) Rate on rough granite from Barre, Vt., to Grand Crossing, Ill., not found unreasonable as compared with rate on building and monumental granite. Complaint dismissed. Blake & Co. v. C. V. Ry. Co., Unrep. Op. A-241.

(kk) Rates on pine doors from Merrill, Wis., to various Atlantic ports, when for export, found to be unjustly discriminatory as compared with rates contemporaneously in effect on pine lumber when for export. Stange Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-244.

(ll) Rough stone not found entitled to lower rate than dressed stone. Complaint dismissed. Flynn v. C. I. & L. Ry. Co., Unrep. Op. A-257.

(mm) Hickory spokes not entitled to lower rate than lumber. Zwick & Greenwald Wheel Co. v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-259.

(nn) Rates on bar iron and steel not found unreasonable as compared with rates on iron and steel articles. Goldfield Consolidated Mines Co. v. S. P. Co., Unrep. Op. A-292.

(oo) Rates on poles and piping not found entitled to same rate as lumber. McGillan v. S. P. Co., Unrep. Op. A-303.

(pp) Contention that because differential on other carload traffic was reduced between Little Rock and Fort Smith, reduction should have been made on bananas, not sustained. Arkansas Fruit Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-304.

(qq) Mausoleum granite is building granite, and entitled to same rates. Milne & Hector v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A-331.

(rr) Rate on stock cattle in excess of 75 per cent of rate in effect on fat cattle found unreasonable. Reparation

awarded and reduction ordered. Brackney v. C. & N. W. Ry. Co., Unrep. Op. A-343.

(ss) Rate applicable to wrapping paper, n. o. s., should have been assessed on shipment of tissue wrapping paper instead of tissue paper rate. Continental Paper Bag Co. v. G. & J. Ry. Co., Unrep. Op. A-346.

(tt) While value of carload of tin cans is only a fraction of the value of carload of condensed milk, eastbound rate on tin cans produces car revenue which is materially less than the westbound rate on condensed milk. Pacific Creamery Co. v. S. P. Co., Unrep. Op. A-356.

(uu) Rate on wall finish (Muresco) not found unreasonable as compared with rates on whiting and paint stain. Salt Lake Glass & Paint Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-357.

(vv) Rates on trolley ties from Purshall, W. Va., to Cuyahoga Falls, O., should not exceed those in effect on lumber. Williams v. W. M. Ry. Co., Unrep. Op. A-365.

(ww) Rates on pancake flour from St. Joseph, Mo., to San Francisco and Los Angeles, Cal., found unreasonable and unduly prejudicial as compared with rates on buckwheat and corn flour. Davis Milling Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-398.

(xx) Other articles of greater value are accorded lower rates than bridge iron, but this does not prove that rates on bridge iron are unreasonable. Canton Bridge Co. v. P. Co., Unrep. Op. A-612.

(yy) From a transportation standpoint cyanide of potassium and cyanide of sodium differ only in value. Goldfield Consolidated Milling & Transp. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-644.

(zz) Pulp wood is somewhat less valuable than logs, and loads as heavily. Curry & Whyte Co. v. G. N. Ry. Co., Unrep. Op. A-645.

(3a) Comparison of cement and brick rates not of substantial value. Cement Rates to Stations on Midland Continental R. R., 32 I. C. C. 540, 542.

(3b) Comparison of rates on commodities of low grade with those on high grade commodities are of little value. Lindsay & Co. v. N. P. Ry., 33 I. C. C. 150, 153.

(3c) The rates on commodities which do not move are not subject to the revision which active use is likely to make necessary, and they are therefore of little or no value as standards of comparison. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 366.

(3d) If lumber is to be compared with all other commodities grouped together, it is important to know the tonnage relation which the movement of lumber bears to the aggregate tonnage represented by those commodities. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 366.

§13. Comparisons of Rates.

§13. (1) In General.

See Comparative Rates; Through Routes and Joint Rates, §15.

(a) In determining fourth section violations, rates of the same character should be compared with one another; proportional rates should not be compared with flat rates. Rates on Grain and Grain Products to Texarkana, Ark., 29 I. C. C. 35.

(b) A scale of rates employed in Central Freight Ass'n territory, and applied by roads east of Illinois on shipments from Missouri to certain Illinois points, while of value for the purpose of comparison, is by no means conclusive of the unreasonableness of rates in western territory. Straw Rates from Stations in Missouri to Alton, Ill., 29 I. C. C. 562, 563.

(c) Local rates disregarded except as their sum is used to measure through charge and proportional rate on through traffic from river crossings to interior point is higher than local rate between same points. Interior Iowa Cities Case, 28 I. C. C. 64, 69.

(d) Ordinarily whatever relation is established for class rates would apply in case of commodity rates. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 196.

(e) Reshipping rates on grain products from Chicago to points east are usually somewhat higher than the corresponding rate upon grain. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 551.

(f) While rates to Shreveport may be abnormal via circuitous routes, due to competition, this fact does not prove

that the rates by the direct routes are abnormal. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 577.

(g) Where rates over routes offered for comparison are not over customary practicable routes the hypothetical figures resulting are not acceptable tests. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 686.

(h) Additional back haul and reconsigning charges would accrue over routes offered for comparison and are not acceptable tests. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 686.

(i) Rates for the transportation of imported flaxseed from New York, N. Y., to Toledo, O., found to be unjustly discriminatory as compared with the rates from New York, N. Y., to Buffalo, N. Y. Reparation denied. Major Co. v. D. L. & W. R. R. Co., Unrep. Op. A-165.

(j) Comparison made and arguments advanced relative to the alleged unreasonableness of rates are not entitled to great weight where the conditions underlying them are not shown of record. Lombard Brick & Tile Co. v. C. & N. W. Ry. Co., 30 I. C. C. 84, 87.

(k) A comparison of rates to points under the western or official classification with rates to points governed by southern classification is not conclusive. Fourth Section Violations in the Southeast. 30 I. C. C. 153, 186.

(l) The reasonableness of rates in question may be determined by comparison with other related rates. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 423

(m) Rates may be compared, though no evidence of the various circumstances and conditions of transportation are submitted. Rates have been frequently justified or condemned upon records containing little else than mere rate and distance comparisons; under the condition, however, of a known general similarity of conditions, as, for example, where the movements compared are of the same commodity in the same territory. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 424.

(n) Comparison of rates is a usual practice allowed by courts and the Commission as one of the matters proper for consideration in the effort to arrive at a conclusion as to questions of reasonableness or discrimination. To make such evidence of material value, however, there must be of necessity some similarity of circumstances or conditions. Kindel v. C. & S. Ry. Co. (Colo., 1914), 139 Pac. 1105, 1108.

(o) The customary rule is that the rail-and-water rate between two points should be less than the all-rail rate. Bowling Green Protec. Asso. v. E. & B. G. P. Co., 31 I. C. C. 301, 305.

(p) Commodity rates are ordinarily lower than class rates. Class rates therefore afford a reasonable test for measuring the general level of commodity rates. The Five Per Cent Case, 31 I. C. C. 351, 401.

(q) A comparison of rates from one city to a second with those from a third city to the latter does not necessarily denote undue prejudice if the withdrawal of the carrier's concurrence in the rates from such third city would not affect the movement, rates, or practices respecting elevation, which are under attack. Elevation Allowances at St. Louis and E. St. Louis, 30 I. C. C. 696, 699.

(r) Comparisons of expense and performance have long been made by carriers in cases before the Commission, but have nearly always rested on transient data. Those of the future should be based on permanent analyses and compilations. In re Separation of Operating Expenses, 30 I. C. C. 676, 680.

(s) Establishment of joint rates on terminal basis from water-locked points on salmon while denying same to shingles not found to constitute unjust discrimination. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 370.

(t) In comparing rates from eastern mills with those from the Soo due allowances should be made for differences in the conditions and circumstances surrounding the transportation. Lake Superior Paper Co., Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 412.

(u) Rates have been justified or condemned upon records containing little else than mere rate and distance comparisons; under the condition, however, of a known general similarity of conditions. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 424.

(v) Rate from Chicago to Milwau-

kee is governed largely by lake competition and is, therefore, not properly comparable with a rate to an interior point. American Coal & Supply Co. v. C. & N. W. Ry. Co., 30 I. C. C. 492, 493.

(w) Transportation conditions with respect to the movement of traffic from Seattle to the East are similar to those which obtain in connection with traffic from California terminals. Norton Co. v. N. P. Ry. Co., Unrep. Op. A-637.

(x) Transportation conditions surrounding the movement of high explosives from Chicago to Concord Junction via Detroit are not essentially dissimilar to those from Aetna. Aetna Powder Co. v. Wabash R. R. Co., Unrep. Op. A-681.

(y) A mere comparison of different minima cannot establish the unreasonableness of a particular minimum as unreasonable, where other facts of record show such minimum to be reasonable. Railroad Commission of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 37.

(z) Where it is sought to show that the charge of a certain carrier is unreasonable and for that purpose comparison is made with the charges of other carriers, and it appears that the carrier in question is engaged only in the transportation of a certain traffic, whereas the other lines with which comparison is made are engaged in general traffic, such comparisons are not conclusive. Worn v. B. & L. R. R. Co., 32 I. C. C. 58, 59.

(aa) In considering rate comparisons great caution should be used in drawing inferences from averages based upon a limited number of selected points. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 154.

(bb) The fact that a carrier, to equalize rates through different gateways, voluntarily applies an intrastate rate to a point beyond the state, does not imply that the same rate is a measure of the reasonableness of rates to other points differently situated. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268.

(cc) To be of value hypothetical rates should be constructed in the same manner as the rates they are to be compared with. Salt Lake Mattress & Mfg. Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. C. 417, 426.

(dd) Comparisons of ton-mile yields on traffic figured on both present and proposed rates with the ton-mile yields of rates theretofore fixed by the Commission, are far from controlling, but may tend to show that proposed rates are unreasonably high. Northbound Rates on Hardwood, 32 I. C. C. 521, 529.

(ee) Rates not fixed by the Commission cannot be properly used as a basis of comparison with rates fixed by the Commission after long and exhaustive investigation. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 557.

(ff) Earnings derived in part from local traffic on which the ton-mile average is always high, hardly affords a fair comparison with reshipping rates. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 593.

(gg) Class rates and underlying basis of commodity rates between New York and Chicago have been looked upon as the general rate standard by which other rates may be measured. Five Per Cent Case, 31 I. C. C. 351, 353.

(hh) Rates on all commodities, including coke, are higher than rates on coal. Beatrice Commercial Club v. C. B. & Q. R. R. Co., 31 I. C. C. 173, 181.

(ii) Immense tonnage of grain and competition of carriers leading to East and South have resulted in depressing rates. Starch not affected. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 600.

(jj) Relevant comparisons are necessarily between domestic rates for similar distances in the same general territory. Railroad Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 647.

(kk) Canadian rates can not be used as a fair measure of the reasonableness of rates in Montana. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 650.

(ll) Third-class rate on common glassware from Cincinnati, Ohio, to Knoxville, Tenn., not found unreasonable as compared with third-class rates between other points in South. Lower commodity rate denied. Traffic Bureau of Knoxville v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-695.

(mm) Line rates extended threadwise through a territory in a direction at right angles to the line leading to point of destination, are not blanket rates. Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C. 14, 22.

(nn) Accurate and reliable results cannot be obtained from a comparison based on published rates, irrespective of the tonnage moved. Pub. Utilities Comm. of Idaho v. O. S. L. R. R., 33 I. C. C. 103, 104.

(oo) Where territories of origin are quite different and there is an entire absence of evidence as to comparative transportation conditions, rate comparisons are of little value. Lindsay & Co. v. N. P. Ry., 33 I. C. C. 150, 153.

(pp) Rates actually charged prior to the adoption of the Elkins Act and the Hepburn amendment afford little basis for a fair comparison with rates now in effect. The instability and wide variation found in those early rates prove that they were fixed by considerations other than a fair return for the service rendered. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 364.

(qq) Where the only discrimination alleged is based upon a comparison of the rates complained of with rates to competitive points from the same points of origin, the Commission cannot consider whether or not these rates are discriminatory as compared with rates from other points of origin. Lindsay & Co. v. N. P. Ry., 33 I. C. C. 150, 153.

(rr) Rates not fixed by the Commission cannot be properly used as a basis of comparison with rates fixed by the Commission after long and exhaustive investigations. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 557.

(ss) Comparisons of class rate applying on cleaning compounds do not show class rates to be unreasonable, and conditions do not require the establishment of commodity rates from Bristol, Va.-Tenn. Reynolds Corp. v. N. & W. Ry. Co., Unrep. Op. A-803.

(tt) Transportation conditions of less value than a comparison of rates in same general territory. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 269.

(uu) Comparisons are not very helpful in judging of a rate under consideration where it does not appear that the rates taken for the comparisons apply for the movement of traffic under conditions similar to those with which the Commission is here concerned. Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C., 645, 649.

(vv) Bare rate comparisons not supplemented by evidence as to the volume of the movements or other comparable conditions, are unconvincing. Lumber Rates from Points in Arkansas, 34 I. C. C., 102, 104.

(ww) The relation of the movement of a commodity to a certain point to the movement to intermediate points is obvious and invites rather than repels such comparisons as are afforded by the differences in average hauls. Lumber Rates from Points in Arkansas, 34 I. C. C., 102, 105.

§13. (1½) Commodity and Class Rates.

(a) Commodity rates are ordinarily lower than class rates, and class rates therefore afford a reasonable test for measuring the general level of commodity rates. 31 I. C. C., The Five Per Cent Case, 351, 401.

(b) Commodity rates to Macon, Miss., on grain and grain products should not exceed rates to Mobile, Ala., by more than the difference in cents per 100 lbs. by which rates on classes to which these commodities belong exceed rates on corresponding classes to Mobile. Readjustment authorized but reparation denied. Macon Merc. Co. v. M. & O. R. R. Co., Unrep. Op. A-693.

§13. (2) Divisions and Joint Rates.

See Divisions, §7.

§13. (5) Proportional and Local Rates.

(a) In determining fourth section violations rates of the same character should be compared with one another, and proportional rates should not be compared with local rates. Rates on Grain and Grain Products to Texarkana, Ark., 29 I. C. C. 35, 36.

§13. (6) State and Interstate Rates.

(a) The existence of a lower rate prescribed by state authorities does not prove that the interstate rate is unreasonable. Salina Produce Co. v. M. P. Ry. Co., Unrep. Op. A452.

(b) According to a late Supreme Court decision it is doubtful whether the Texas State rates on export cotton are lawful. King, Collie & Co. v. A. & S. Ry. Co., Unrep. Op. A519.

(c) Where different charges are made on intrastate and interstate travel, the Commission cannot solve the problem by

making the state rates the absolute measure of the interstate rate. Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 540.

(d) That rates established by state laws or state authorities on intrastate transportation of persons and property are facts which the Commission will consider, and that it respects the authority establishing such rates, constitutes no valid reason relieving it from performing the duties devolving upon it under the federal constitution and laws. If any rate for transportation wholly within a state may be made the measure of the rates when the transportation moves from one state through or into another, the interstate rate so resulting would not be regulation of interstate commerce by the authority prescribed by the constitution, but by the state. If the function of the Commission be to compute the sum of intrastate rates and prescribe the result as a measure of the interstate rates, actual and direct regulation of interstate commerce by the states would result. Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 540.

(e) Intrastate rates are not controlling in gauging the reasonableness of interstate rates, but in connection with other facts and other rates they are not without significance as a basis of comparison. Weatherford Cham. of Com. v. M. K. & T. Ry. Co., 31 I. C. C. 665, 667.

(f) Although the Commission is not bound to accept a state-made rate as a final measure of an interstate rate, it had always given due consideration to rates established by state commissions. Minneapolis Civic & Commerce Asso. v. M. C. & St. P. Ry. Co., 30 I. C. C. 663, 665.

(g) Cost does not change because a state line is crossed. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(h) To the extent that state-established rates are permitted to determine the reasonableness of interstate rates, to that extent must the Commission, as a federal tribunal, be embarrassed by the anomalous situations arising from conflicts between state and federal jurisdictions. Trier Ry. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 709.

(i) If it be true that in passing on the reasonableness of an interstate rate, a state-fixed rate has no greater sanctity than a rate fixed by a carrier, it would seem that the presumptions, if there are any, would offset each other, leaving the burden of proof upon the complainant. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 709.

(j) Where under the carriers adjustment an interstate rate is based on an intrastate rate, and where it is not shown that the traffic and the rates between the intrastate points actually affect or influence the interstate rate, it cannot be said that the interstate rate is in any way compelled by the intrastate rate or the state authorities. Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 145.

(k) It is well settled that state-made rates may be considered in determining the reasonableness of interstate rates in the same general territory. Freight Rates from Minnesota Points, 32 I. C. C. 361, 363.

(l) While the Commission is not bound to accept state-made rates applicable to intrastate traffic as a fair measure of interstate rates, yet the fact that certain switching rates are fixed by a state commission after full hearing, and sustained by the state courts, is entitled to weight in determining the reasonableness of the same rates as applied to interstate traffic. Baltimore Switching Charges, 32 I. C. C. 376, 379.

(m) If any rate for transportation wholly within a state may be made the measure of rates when that transportation moves from one state through or into another, the interstate rate so resulting would not be regulation of interstate commerce by authority prescribed by the Constitution but by the state. Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 541.

(n) Commission not at liberty to accept sum of state rates as a measure of interstate rates. To do so would be to admit "divided authority over interstate commerce." Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 541

(o) If the function of this Commission be to compute the sum of intrastate rates and prescribe the result as a measure of the interstate rates, actual and direct regulation of interstate commerce by states would result. Corp.

Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 541.

(p) Commission cannot say that merely because a higher intrastate rate exists that an increase of an interstate rate to meet the state-made rate is justified, even though transportation conditions are similar as to distance and territory. Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545.

(q) That other lines have adopted the Wisconsin scale of pulp wood from certain points in Michigan to points in Wisconsin is not conclusive that higher rates are unreasonable. Rhinelander Paper Co. v. M. St. P. & S. S. M. Ry. Co., 31 I. C. C. 555, 558.

(r) Carriers may not by means of their intrastate rates discriminate against traffic moving interstate. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 567, 570.

(s) Oklahoma intrastate rates not controlling in gauging reasonableness of interstate rates, but are not without significance as a basis for comparison. Weatherford Chamber of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 667.

(t) Voluntary application by carrier of an intrastate rate to a point beyond the state, to equalize through different gateways, not a measure of the reasonableness of rates to points differently situated. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268.

(u) Intrastate rates on wrought iron pipe from Bakersfield to Connor, Shale and Signa, Cal., reduced by California Railroad Commission. The fact that these reduced rates were subsequently applied to interstate traffic does not warrant a finding that former rate was unreasonable. General Construction Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-812.

(v) Interstate scale of rates on cottonseed from points in South Carolina to Charlotte, N. C., higher than South Carolina intrastate scale for similar distances, not found unreasonable. Scale of rates here under attack is lower for all distances than rates prescribed by Commission in various cases. Elba Mfg. Co. v. S. Ry. Co., Unrep. Op. A-830.

(w) Rate on saw mill machinery from Beaumont, Tex., to Elizabeth, La., found unreasonable from comparison with Texas and Louisiana scales. Beaumont Iron Works Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-853.

§14. Competition.

See Advanced Rates, §2½ (e); Blanket Rates, §1 (a); Blanket Rates, §14 (c); Claims, §2 (b).

§14 (1) In General.

See Class Rates, §2 (a).

(a) While competition may have exerted an influence or have been the principal inducement to the reduction of rates, it does not follow that the rates thus established were upon an unreasonably low basis, and it is not enough for respondent to show that this competition is no longer present. Lumber Rates from Local Points to Chattanooga, Tenn., 29 I. C. C. 646, 648.

(b) Benefit of competition to more distant common points secured to local or non-competitive point by applying same rate to latter as applied to common point. Mayor and Council of Vienna v. G. S. & F. Ry. Co., 28 I. C. C. 173, 175.

(c) Class rates from Atlantic seaboard to Chicago and St. Louis are reasonably low, and are product of acute competitive conditions. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 233.

(d) While rates to Shreveport may be abnormal via circuitous routes, due to competition, this fact does not prove that the rates by direct routes are abnormal. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 577.

(e) Lower rate in effect to farther distant point forced by short-line competition justified. Thomas Iron Co. v. P. R. R. Co., 28 I. C. C. 608, 609.

(f) Differential between Omaha and Kansas City to Arkansas fixed as a result of competition with Illinois and Iowa grain. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 685.

(g) Where the rates applied are influenced by actual and forceful competition they are not always fair standards by which to determine the reasonableness of other charges. Seavey Trustee v. G. H. Ry. Co., Unrep. Op. A-210.

(h) Higher rate in effect on cottonwood from Annona, Tex., to Springfield, Mo., a less distance, than from Shreveport, La., to Kansas City, Mo., a greater distance. The points in question are not intermediate via the direct lines or usual routes of movement, and rates were established in order to meet competition. Complaint dismissed. Dodd v. T. & P. Ry. Co., Unrep. Op. A-223.

(i) Where two railroads are joined by branch lines, each cannot justify violations at the junction points on the ground of competition by the others. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 196.

(j) Competition cannot be said to have compelled an unreasonably low rate when such rate is not lower than that charged for like or greater distances in other parts of the country, where transportation conditions are similar or more difficult. Maier & Co. v. S. P. Co., 29 I. C. C. 103, 104, 105.

(k) Legitimate competition, locality properly entitled to advantages of. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 495.

(l) Rates compelled by competition of direct lines are not voluntary rates. Emlenton Petroleum Rates, 29 I. C. C. 519, 521.

(m) Competitive rates not a measure of normal rate. Springfield Traffic Bureau v. St. L. & S. F. R. R. Co., 29 I. C. C. 600, 606.

(n) Phrase "competitive rates" used in sense of rates which permit coal from certain fields to meet competition of coal from other fields. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 672.

(o) If it be true that absorption must be governed entirely by competitive influences, it may well be argued that only that competition which is compelling should be recognized. Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 558.

(p) Fact that carrier has entered into joint rates with lines for traffic from local points destined to non-competitive points in order to compete for long haul, does not present a situation similar to that obtaining at water-locked points where there is no competition between rail lines. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 369.

(q) Owing to competition at the western termini the rates are blanketed for long distances, while eastbound they increase with the distance. Pacific Coast Gypsum Co. v. O. W. R. R. & N. Co., 30 I. C. C. 135, 138.

(r) To a certain extent carriers are justified in placing competitive markets upon an equal basis. Minneapolis Civic & Commerce Asso. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 672.

(s) No justification exists for increasing rates which have long been established and which are not claimed to be unremunerative simply to remove a discrimination caused by advancing rates at competitive points. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 520.

(t) If the sale of news print paper competition is keen, and the freight rate is a factor of vital importance. Lake Superior Paper Company, Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 406.

(u) A great portion of the grain coming through Milwaukee for forwarding via break-bulk route originates in territory in which Chicago competes with Milwaukee as a market. Break-Bulk Rates on Grain, 30 I. C. C. 357, 360.

(v) To points on and west of the line of the K. C. S. R. R. the direct lines from Galveston are at no disadvantage in competing with lines from New Orleans and should not be permitted to charge higher rates to intermediate points. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 630.

(w) Rates from Ohio River crossings to Montgomery and Selma, Ala., have been depressed through combined influence of water, rail and market competition. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 291.

(x) Rates on lumber from Marengo, Milltown and Corydon Junction, Ind., to Chicago, Ill., not found unreasonable as compared with lower rates from Oakland City and other points more distant, made to meet competition. Collier v. S. Ry. Co., Unrep. Op. A-554.

(y) Where lines of railroad are closely interlaced, the territory of a given line is more restricted than where lines are not so close together; and it follows that in such case traffic

cannot be considered competitive as between two carriers where its place of origin is closer to one line than to another by even a relatively small distance, or by a distance that would not be considered where the lines of railroad are further apart. Iowa & S. W. R. R. Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 172, 173.

(z) Where it is shown that a given competition was not abnormal and it appears that the rates which resulted from it were maintained after it disappeared and are still maintained, the rates thus established are apparently only the normal results of normal competition and therefore are presumably reasonable. Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188, 190.

(aa) While carriers may take competition into consideration and make rates to meet it, the Commission has never held that it could compel them to do so. The question of policy or expediency in fixing a rate that is lower than a maximum reasonable rate under the law is left to the judgment and discretion of the carrier. N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215.

(bb) Competitive conditions prevent carriers from assessing charge for cleaning cars at northern markets. New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 611, 612.

(cc) Where certain producers have entered and gained control of a particular market, although it appears that their output is carried at substantially higher transportation costs than their competitors, the natural inferences are that the rates themselves are not the primary cause of the difficulties encountered by the unsuccessful competitors and that their market has been lost by reason of conditions unconnected with those rates. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 363.

(dd) Jobbers are shippers. As such they are entitled, under the Act to rates which are just, reasonable, and not unjustly discriminatory. But the Act does not guarantee to any shipper, or to any city, an indefeasible lien upon any given territory. Rates are not proved unjust, unreasonable, or unjustly discriminatory by a mere showing that under the existing rate structure the shipper cannot successfully compete as a jobber in a certain territory. Lindsay & Co. v. Northern Exp. Co., 33 I. C. C. 394 396.

(ee) Competitive conditions are exceptions which necessitate use of commodity rates. Rates on Coffee, 32 I. C. C. 90, 91.

(ff) Fixing rates to meet competition left to discretion of carrier. New York Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215.

(gg) Commission has never held that it could compel carriers to meet competition. New York Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215.

(hh) Rate from Memphis to Mobile compelled and can not be a basis for comparison with other rates not similarly circumstanced. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 277.

(ii) Much outside competition might be cut off by the establishment of carload rates, and farmers confined to local market. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 464.

(jj) Inequalities frequently appear in rates compelled by. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590. 593.

(kk) Competition has forced Illinois coal rates down to level far below distance rates. Illinois Coal Cases, 32 I. C. C. 659, 670.

(ll) The competition referred to in section 5 is "for traffic." There are no words of limitation in this clause; it covers all interstate, coastwise or foreign traffic. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C., 690, 694.

(mm) Competitive conditions are substantially different on tidewater coal, and a comparison with tidewater rates furnishes no basis for a finding of unreasonableness in rates to line points. Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414, 420.

§14. (1½) Cross-Country Competition.

(a) Where a carrier has voluntarily recognized cross-country competition, upon a subsequent increase being made, it becomes the duty of the Commission to determine whether such in-

creased rates are just and reasonable for the services performed. Lumber Rates from Local Points to Chattanooga, Tenn.. 29 I. C. C. 646, 648.

(b) Where a carrier has voluntarily recognized cross-country competition, upon a subsequent increase being made, it becomes the duty of the Commission to determine whether such increased rates are reasonable for the service rendered. Lumber Rates from Local Points to Chattanooga, 29 I. C. C. 646, 648.

(c) Low rates from Judith Basin territory in Montana to Minneapolis and Duluth due to cross-country competition. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 578.

(d) Direct or cross-country competition between new and older lines may result in equalizing rates. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 648.

§14. (2) Potential Competition.

(a) The extent to which a carrier shall lower its rates to meet anticipated competition is a matter primarily for its decision, and, should it later raise the rate, the sole question for determination is whether that increased rate is just and reasonable for the service performed. Scrap-Iron Rates Between Duluth and Chicago, 28 I. C. C. 467, 470.

(b) It is not true that if water competition leads to a low rate on one commodity the carriers are required by law to make similar reduction on other commodities subject to actual or potential water competition, whether or not such commodities are competitive with each other. Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 488.

(c) Potential competition of water routes have kept rates to Memphis low. Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 546.

(d) Potential competition active on Mississippi River from St. Louis to New Orleans and Vicksburg, and potential on Red River from New Orleans to Shreveport. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 573.

(e) Potential competition held not sufficient in degree to be a factor in establishment of water competitive rates. Santa Rosa Traffic Assn. v. S. P. Co., 29 I. C. C. 65, 68.

(f) If there is not actual competition by water there exists no reason why a point should have a different or better rate from one where it exists. Lumber Rates from Lake Charles and West Lake, La., 31 I. C. C. 258, 259.

(g) While there is no sugar moving to-day between New Orleans and Nashville by water, still the river is navigable and there is possibility of its moving that way. Rates on Sugar, 31 I. C. C. 495, 506.

§14. (3) Railroad Competition.

See Competition.

(a) Rather than meet rates of short line, carriers may desire to abandon business unless leave is obtained to disregard the fourth section. Iowa Grain Rates, 28 I. C. C. 354, 355.

(b) Owing to competition of lines running east and west through Illinois, and thence east to the Atlantic seaboard, and lines running north and south and converging at Chicago, rates on grain to eastern destinations from points in Illinois were made the same from Chicago, irrespective of distance. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555, 556.

(c) Direct lines to Shreveport have depressed their rates to meet combinations through lower Mississippi River crossings. They cannot be required to raise their rates in order to place Texarkana upon the same basis as Shreveport. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 581.

(d) While rates to Shreveport may be abnormal via circuitous routes due to competition, this fact does not prove that the rates by the direct routes are abnormal. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 577.

(e) Rates and facilities on the rail lines have eventually attracted nearly all the long-distance traffic between Ohio River, upper Mississippi River and Missouri River points and New Orleans. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 230.

(f) Southern railways are not in position to compete on equal terms with the railroads north of the Ohio River

through Central Freight and trunk line territories. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 208.

(g) Competition of carriers serving other markets of supply does constitute a justification in some instances for making lower rates to more distant points. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 279.

(h) The fundamental reason for granting relief to any line at a given point is the meeting at that point of the competition of other carriers, against which competition the petitioner is at a disadvantage. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 304.

(i) Present adjustment of rates from New Orleans and Memphis to Ohio River crossings is the result of competition between carriers and markets and appears not to have been governed to any considerable extent by relative distances to points of consumption. Memphis Freight Bureau v. I. C. R. R. Co., 30 I. C. C. 471, 475.

(j) Rates to Chicago influenced by competition of carriers serving New York and Philadelphia. Fourth Section Violations on Sugar, 31 I. C. C. 511, 522.

(k) Competition of a traction line is encountered from Marietta, Ohio, to Parkersburg, W. Va., that is not encountered from Little Kocking. Rate from latter not found unreasonable. Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op. A-798.

§14. (4) Rail-and-Water Competition.

See Rail-and-Water Competition.

(a) It is customary for rates via rail-and-water routes to be somewhat lower than the all-rail rates. Tampa Board of Trade v. L. & N. R. R. Co., 30 I. C. C. 377, 381.

§14 (5) Water Competition.

See Water Competition.

(a) The action of the War Department in declining, after a hearing, to authorize the spanning of a river by a bridge without a draw would not be conclusive upon the Commission as to present or actual navigability of the stream. Santa Rosa Traffic Assn. v. S. P. Co., 29 I. C. C. 65, 68.

(aa) To reach navigable water is inherently the policy of every real railroad within striking distance of the water. Industrial Railways Case, 29 I. C. C., 212, 243.

(b) Water competition between Atlantic seaboard and Pacific coast terminals has forced carload rate from eastern mills to Pacific coast. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 210.

(c) Higher rates in effect from Meridian to various points between New York and Calvert than from Mobile justified by water competition. Meridian Board of Trade & Cotton Exchange v. A. G. S. R. R. Co., 28 I. C. C. 360, 361.

(d) Carriers established any-quantity rates on champagne because water rates were any-quantity. Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 378.

(e) Rates from Menominee, Mich., are controlled by water competition, and rates from Minneapolis are so far affected by competition as to be fairly made when considered with reference to the Wausau rates. Wausau Advancement Asso. v. C. & N. W. Ry. Co., 28 I. C. C. 459, 461.

(f) The fact that because of the likelihood of water competition a carrier makes a rate which may not be compensatory, does not of itself render unreasonable and unjust an increase to a remunerative basis. Scrap-Iron Rates Between Duluth and Chicago, 28 I. C. C. 467, 470.

(g) In the past there has been active and forceful competition for the carriage of sugar by water. Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 487.

(h) Rates to Memphis, Tenn., on coal dictated by water transportation down Mississippi River from the Pittsburgh, Pa., mines. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 536.

(i) Policy of carriers is that they regard meeting water competition as the equivalent of annihilating the river traffic. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 573.

(j) While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are inter-

mediate cannot be justified on the ground that it is necessary to suppress water competition. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 583.

(k) The history of class rates from St. Louis and defined territories to Shreveport indicates that these rates no longer reflect water competition. Texarkana Freight Bureau v. S. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 578.

(l) Due to competition, grain rates to Chicago and Milwaukee from much of the intermediate territory between Minneapolis and Chicago and Milwaukee are higher than the so-called proportional rate upon which business moves from Minneapolis. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 552.

(m) Rail rates must be kept so low that river boats cannot live on them. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 574.

(n) Where there is nothing to prevent vessels from moving between the points of origin and destination, there is no elimination of water competition. Lumber Rates from Lake Charles and West Lake, La., 31 I. C. C. 258, 259.

(o) Present level of rates from Ohio River cities to Columbus, Ga., has been brought about by combined influence of water, market and rail competition. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 290.

(p) Contention that rate is unduly low on account of water competition on Mississippi River, sustained. Increased rate justified. Memphis Freight Bureau v. I. C. R. R. Co., Unrep. Op. A-632.

(q) Present level of rates between eastern cities and Macon is not necessitated by actual water competition. Fourth Violations in the Southeast, 30 I. C. C. 153, 266.

(r) Present low level of rates from New York to Augusta is the result, in the main, of water competition. Fourth Violations in the Southeast, 30 I. C. C. 153, 261.

(s) Rates from Ohio River crossings, St. Louis and Chicago, to Memphis, Tenn., Greenville, Vicksburg and Natchez, Miss., are necessitated by competition afforded by the Mississippi River. Fourth Violations in the Southeast, 30 I. C. C. 153, 251.

(t) Rates from Ohio River crossings, St. Louis and Chicago to gulf ports, when established by rail lines in 1887 and since maintained, were necessitated by an active compelling water competition. Fourth Violations in the Southeast, 30 I. C. C. 153, 230.

(u) Rates from Ohio River crossings to south Atlantic ports are induced by an active, present, compelling competition. Fourth Violations in the Southeast, 30 I. C. C. 153, 207.

(v) Low rates from New Orleans to Charleston, Savannah, Brunswick, Jacksonville and Tampa are necessitated by direct water competition. Fourth Violations in the Southeast, 30 I. C. C. 153, 193.

(w) All-rail and water-and-rail rates made to Mobile and New Orleans are necessitated by the water competition existing between eastern ports and these points. Fourth Violations in the Southeast, 30 I. C. C. 153, 165.

(x) Steamships plying between north Atlantic and south Atlantic ports carry freight at rates far below those of rail lines and have the effect of depressing the rates not only between ports but between stations in eastern trunk line territory and the south Atlantic coast. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 171.

(y) Where it is shown that a certain scale of rates is water-competitive, and that points to which it is asked that the same rates be applied are not so situated as to be entitled to the advantages of water-compelled rates, complainant's request cannot be granted, unless special reasons are advanced therefor. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry., 32 I. C. C. 247, 251.

(z) Erie Canal competition influences rate on apples from Rochester to New York City. Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 148.

(aa) Rate originally made to meet water competition hardly a reasonable charge for service performed. Lumber Rates from Lake Charles and West Lake, La., 31 I. C. C., 258, 260.

(bb) Destructive competition on Green and Barren rivers similar to that on other Southern and Western rivers. Bowling Green Protective Asso. v. E. & B. G. Packet Co., 31 I. C. C. 301, 303.

(cc) Eastern trunk lines depart from

normal percentage scale because of low water-competitive rates from New Orleans in fixing rates from East to Cincinnati and other Ohio River crossings and St. Louis. Rates on Sugar, 31 I. C. C. 495, 499.

(dd) Panama Canal likely to affect Montana grain rates. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 653.

(ee) Westbound rate on toe calks from Joliet, Ill., to Portland, Ore., is made in competition with the water rate from New York to Portland. Reparation denied. Franklin Steel Works v. O. W. R. R. & N. Co., Unrep. Op. A-685.

(ff) Water competition justifies lower rates on lumber from Dyersburg, Tenn., to Cincinnati, O., than to intermediate points. North Vernon Lumber Co. v. I. C. R. R. Co., Unrep. Op. A-688.

(gg) Rate on glassware from Cincinnati, O., to Nashville, Tenn., is influenced by water competition; but this does not appear to result in substantial damage to Knoxville jobbers. Traffic Bureau of Knoxville v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-695.

(hh) Commodity rate on rugs of an invoice value less than $100 compelled by water competition; and three times the first-class rate applicable to Oriental rugs, exceeding invoice value of $100, not found unreasonable. New York to San Francisco. W. & J. Sloane v. S. P. Co., Atlantic S. S. Lines., Unrep. Op. A-699.

(ii) It is said that the competition of the steamship lines operating between New York and New Orleans has been reflected in the rates to New Orleans and other lower Mississippi River points. Helena Freight Bureau v. M. P. Ry. Co., Unrep. Op. A-701.

(jj) Same rates established from Owensboro, Ky., to points north of the Ohio River as from Henderson because of water competition between Owensboro and Evansville. Bower & Co. v. L. H. & St. L. Ry. Co., Unrep. Op. A-744.

(kk) Stanley, Ky., is 1 1-2 miles from river and can not be said to have distinctive water competition. Eagle Distillery v. L. H. & S. T. Ry. Co., 32 I. C. C. 195, 197.

(ll) Rates from New Orleans, to Arkansas were made to meet not only water competition but also competition with St. Louis. Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co., 32 I. C. C. 203, 204, 205.

(mm) Carriers cannot be compelled to meet water competition. New York Produce Exchange v. N. Y. C. & H. R. R. Co., 32 I. C. C. 212, 216.

(nn) Water competition can not be said to exist at intermediate stations not situated on river. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 235.

(oo) Influence of water competition on the Mississippi River and its tributaries must be considered. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 251.

(pp) Amendment of 1910 applies only to rates thereafter reduced to meet water competition. Transcontinental Commodity Rates, 32 I. C. C. 449, 453.

(qq) Transcontinental carriers cannot be charged with unjust discrimination for not extending same rates to other points not of direct contact with Atlantic-Pacific ocean competition. Transcontinental Commodity Rates, 32 I. C. C. 449, 455.

(rr) Early rate adjustment affected by water competition, as distinguished from industrial competition, of northern hardwood moving to markets located on the rivers. Northbound Rates on Hardwood, 32 I. C. C. 521, 525.

(ss) Venture in traffic policy or expediency to meet water competition. Car-Ferry Allowance at Cheboygan, Mich., 32 I. C. C. 578, 581.

(tt) Water rates materially reduced since opening of Panama Canal. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 619, 620.

(uu) Carriers should be permitted to compete for coast-to-coast traffic so long as it may be secured at rates which cover out-of-pocket cost. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 621, 622.

(vv) Competition of water lines for l. c. l. traffic likely to be as severe as on carload rates. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 629.

(ww) Unrestricted competition between water and rail lines has an effect upon territory in vicinity of their termini. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 696.

(xx) Continuance of service, other than through Panama Canal, would neither exclude, prevent, nor reduce competition on route by water. Application S. P. Co. in re Operation S. S. Co. 32 I. C. C. 690, 700.

(yy) It is said that present all-rail rates from eastern seaboard to gulf ports are controlled by competition of all-water lines which has resulted in a low scale of all-rail class rates and that there is active or potential water competition from Pittsburg to New Orleans and Mobile which compels a low scale of rates through Ohio River gateways. Union Bag & Paper Co. v. D. & H. Co., Unrep. Op. A-814.

(zz) Carriers contend that class-C rates from Sacramento, Cal., to Portland, Oreg., and Seattle and Tacoma, Wash., are below normal, having been depressed by competition of coastwise steamship lines. Rates on Melons from California Points, Unrep. Op. A-892.

(3a) No justification for maintenance of higher rate on yellow pine lumber from Hot Springs, Ark., to Bristow, Va. than to Alexandria, Va., a farther distant point. Valley Planing Mill Co. v. St. L. I. N. & S. Ry. Co., Unrep. Op. A-906.

(3b) Through carlessness or misunderstanding fresh fruits and vegetables from points in California to Seattle and Tacoma, Wash., have been accorded low rates on account of assumed effect of water competition. Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points, Unrep. Op. A-912.

(3c) Rate on desks from High Point, N. C., to Tacoma, Wash., is controlled by water competition. Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918.

(3d) Rate on prairie hay from Melissa, Tex., to Vicksburg Miss,, and New Orleans, La., depresses by water competition. Hughes & McCoy v. C. R. I. & P. Co., Unrep. Op. A-935.

(3e) Where two points are connected by both rail and water routes in a proceeding in which the rate on a commodity not affected by water competition is attacked, a comparison with rates on a commodity affected by water competition are not helpful. Furniture Mfrs' Asso., v. A. A. R. R., 34 I. C. C., 262, 265.

§15. Contract Relying on Rate.

(a) Because complainant entered into a contract with a municipality, thinking their commodity would move at a rate in effect three or four years in the past, is no ground for reparation. Chattanooga Sewer Pipe & Fire Brick Co. v. A. G. S. R. R. Co., Unrep. Op. A450.

§15½. Cost Computations.

See Cost Accounting.

(a) Assumption of a full 100 per cent return movement of empty cars, notwithstanding fact that certain proportion of these cars returned loaded with company material, unduly swells the cost of this traffic. Coal Rates from Virginia Mines, 30 I. C. C. 635, 646.

(b) It is not proper to set up as an item of expense mileage on the car both ways without crediting the mileage earned on cars returned under load. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 518.

(c) Freight paying less than 3 mills per ton-mile is looked upon by carriers as perhaps paying less than the actual out-of-pocket cost. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 176.

(d) A fair measure of the maximum differential applicable in a given case might bear a fair relation to the out-of-pocket cost which the traffic occasions. Coal Rates from Virginia Mines, 30 I. C. C. 635, 649.

(e) From the standpoint of economy in operation and facility in future financing of the New York Central and Lake Shore & Michigan Southern a consolidation is warranted. Proposed Bond Issue by N. Y. C. & H. R. R. R. Co., 30 I. C. C. 147, 151.

(f) Length of haul and volume of traffic are among the determining factors in arriving at cost. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(g) Cost does not change because a state line is crossed. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(h) It is the duty of the Commission to keep itself informed regarding the manner in which the railway business is conducted, and a knowledge of the variations in unit costs is valuable to it even if no rates are based thereon. In re Separation of Operating Expenses, 30 I. C. C. 676, 679.

(i) What weight to give to the cost factor depends upon the particular case. In re Separation of Operating Expenses. 30 I. C. C. 676, 678.

(j) The courts have a right to look to the Commission and to the various state commissions for a careful study of railway statistics and accounts. In re Separation of Operating Expenses, 30 I. C. C. 676, 679, 680.

§16. Cost of Production.

See Discrimination, §9 (a); Equalization of Rates, §3 (f).

(a) It does not follow, however, that a company may with propriety seek the establishment of lower rates on its articles of manufacture because it is not in a prosperous condition or because the cost of assembling its raw material may be greater than that of its competitors. Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502.

(b) Difference in the value of two commodities loading to the same weight does not authorize a difference in rate where the element of loss and damage is negligible as to both commodities. Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 503.

(c) Slight differences in the rate are not felt by the producer of grain to the same extent that they are by many other industries. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 559.

(d) Commercial advantages and disadvantages are not factors that can have any great consideration by the Commission in reaching conclusions as to the propriety or the rate structures under which such commodities move. The Illinois Coal Cases, 32 I. C. C. 659, 673.

(e) Cost of producing apples in Virginia has increased considerably over 10 years ago. Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 147.

(f) When annual running time of mines falls below three-quarters full time, the annual average cost per ton increases excessively. Coal and Oil Investigation, 31 I. C. C. 193, 195.

(d) Spruce unusually inaccessible and costly to cut and manufacture; cost of production has kept pace with increased value. Lumber Rates Southern Ry. Points to Eastern Points, 31 I. C. C. 244, 250, 252.

(h) Age of mine and equipment important factors in fixing cost of production of coal. Illinois Coal Cases, 32 I. C. C. 659, 672, 673.

§17. Cost of Operation.

See Intra, §18 (ii); Advanced Rates, §7 (2); Reasonableness of Rates, §9.

(a) Cost of betterments charged to operating expenses no justification for increase in rates. New York Butter and Cheese Rates, 28 I. C. C. 330, 331.

(b) U. P. line has been reballasted, grades and curvatures have been eliminated, and a large part of the line double tracked. Double tracks have been laid on much of the line of the O. S. L. U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 523.

(c) General grade on Santa Fe from Gallup to Arizona points is downward, Gallup being 6,498 feet above sea level, and Phoenix, the southern terminus of the Prescott & Phoenix branch, 1,200 above sea level. Arizona Corporation Commission v. A. T. & S. F. Ry. Co., 28 I. C. C. 428, 430.

(d) Increased tractive power of locomotives is significant as tending to reduce the operating cost per unit of freight transported. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 535.

(e) It is not proof of extravagance that a carrier, operating through a mountainous and sparsely settled country, and having a roadbed upon which there are short curves and steep grades, has a higher operating expense than another carrier in the same general territory having no such transportation difficulties. Railroad Com. of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491.

(f) Allowances to and free services for proprietary industries have materially increased operating expenses of carriers. Industrial Railways Case, 29 I. C. C. 212, 217.

(g) Weather interference element to be considered in determining cost of handling traffic. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 435.

(h) A portion of the increase in maintenance charges is due to safety-appliance acts, boiler inspection laws, state

legislation requiring the elimination of grade crossings and other enactments. These laws, to no small extent, enforce measures of precaution which the carriers ought to take and which they would voluntarily have taken in many particulars in pursuance of sound railway policy and practice. It is, nevertheless, true, that in many cases they have had the effect of hastening improvements in equipment and roadway that would have come later, and of burdening the maintenance expenses of the years in which the improvements were made. Wise policy requires that a railway property should be kept up to the level of its highest reasonable efficiency at all times; and the postponement of needed repairs either in road or equipment because of a temporary falling off in revenues cannot be justified or be regarded as true economy. The Five Per Cent Case, 31 I. C. C. 351, 381.

(i) Where part of road is over rough and mountainous country, where grades are steep and curves sharp, and as original construction was such that frequent replacement and repairs are necessary, the cost of operation must be high. Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 489.

(j) Commission has repeatedly recognized the comparatively greater cost of transporting fresh meat than packing-house products. Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 548.

(k) A refrigerator car costs about 50 per cent more to construct than does a box car. Rental Charges for Insulated Cars, 31 I. C. C. 255, 257.

(l) Fuel, next to wages, the largest item in operating expense of railroads. Five Per Cent Case, 31 I. C. C. 351, 412.

(m) Leakage of sulphuric acid is injurious to rails. International Agricultural Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 200.

(n) Commission can not view with favor any attempt to obtain an increase in net revenue through unduly restricted expenditures upon maintenance. Five Per Cent Case, 32 I. C. C. 325, 328.

(o) Shipments from points in California to Seattle and Tacoma, Wash., are in part through mountainous country, involving two and three-line hauls. Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points, Unrep. Op. A-912.

§18. Cost of Service.

See Accounting, §3 (d); Branch Lines, §1 (k); Facilities and Privileges, §15 (4h); Reasonableness of Rates, §9.

(a) Lesser cost of service on account of greater volume of business might be offset by expense of providing terminals in large cities and of operating same. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 200.

(b) Element of cost should not be controlling. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 200.

(c) Cost of service is material factor, but not only factor to be considered. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232.

(d) Where a line, although separately operated, is by stock ownership a Rock Island property, it cannot be ignored in passing upon the reasonableness of rates charged by the parent company, since it affords opportunity for shorter hauls and reduced operating expenses, with correspondingly increased revenue per ton-mile. Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287.

(e) No substantial difference in distance, in the cost of service or in the handling of through shipments from Trunk Line or Central Freight Association territories to Elgin and Aurora. Elgin Commercial Club v. B. & M. R. R., 28 I. C. C. 380, 381.

(f) Increased tractive power of locomotives is significant as tending to reduce the operating cost per unit of freight transported. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 536.

(g) Gluten feed and mixed feed by-products of grain no greater than grain products. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 553, 554.

(h) Higher rates are charged on glucose than on other commodities that cannot be transported at so low a cost as glucose. National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 674.

(i) Even a fair approximation of the cost of transporting a unit of freight is difficult, and any method employed must necessarily be somewhat arbi-

trary. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 602.

(j) It is not usual to quote the same rate on fresh meat and packing-house products. Fresh meat is more difficult to preserve in transit than packing-house products, more difficult to handle and loads lighter by 5,000 to 6,000 lbs. to the car. And the Commission has repeatedly recognized the comparatively greater cost of transporting fresh meat. Decker & Sons v. C. N. & St. P. Ry. Co., 30 I. C. C. 547, 548.

(k) Cost due to switching movement is very small, and may not properly be made the basis of an additional charge for a two-line haul of substantial length. Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I. C. C. 671, 678; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678.

(l) There is a difference in the extent to which the ascertained cost could be utilized as between manufacturing and railway companies, in that a manufacturer may discontinue to manufacture a product found to be unprofitable, whereas a railway may be compelled to continue an unprofitable service. In re Separation of Operating Expenses, 30 I. C. C. 676, 678.

(m) Probably costs the carriers as much to transport the lower grades of oils as it does to transport the refined oils. American Refining Co. v. St. L. & S. F. R. R. Co., 30 I. C. C. 103, 104.

(m) Comparison of charges for heater service with the cost of lining cars for protection of produce shows that the ultimate expense to the public is somewhat less for lining. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 441.

(o) Neither the shippers nor the carrier can insist upon a wasteful or expensive service for which the consumer must ultimately pay. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 441.

(p) The Denver & Salt Lake Railroad Company suffers the disability of severe operating conditions. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508.

(q) The cost of store-door delivery at Washington, D. C., about 5 cents per 100 pounds. Chamber of Commerce of Washington v. B. & O. R. R. Co., 30 I. C. C. 446, 447; Judd & Detweiler, Inc., v. B. & O. R. R. Co., 30 I. C. C. 455, 457.

(r) While fares may seem high and in excess of the average passenger fares, there may be difficulties which make transportation more costly. Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491.

(s) Where part of road is over rough and mountainous country where grades and steep and curves sharp, and as original construction was such that frequent replacement and repairs are necessary, the cost of operation must be high. Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 489.

(t) Prior proceedings before the Commission have demonstrated that in many respects operating conditions in the Walsenburg district are similar to what exist on the D. & S. L. R. R. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508.

(u) The Commission appreciates the difficulty of even fairly approximating the cost of transporting a unit of freight and realizes that any method employed must necessarily be somewhat arbitrary. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 602.

(v) It may fairly be questioned whether the same high-rate structure should prevail in a district thickly populated and in which traffic moves in large quantities as naturally prevails in territory which is more sparsely settled and where transportation costs are relatively higher. Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 30 I. C. C. 615, 618.

(w) Rates on lumber from Boardman, N. C., to Spartanburg, S. C., higher than rates from Whitesville and other points, not found unreasonable owing to greater cost of movement from Boardman. Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548.

(x) Distance, grade and curvature are important elements in cost of service, especially on mountain lines. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 555.

(y) Proof of increased general operating expenses and statements of earnings per ton-mile may not justify the proposed advance. Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 22.

(z) Increase in maintenance of equipment evidence of development and change. Five Per Cent Case, 31 I. C. C. 351, 380.

(aa) Unit of cost of moving certain bulk freight in large volume reduced while cost of moving passengers has increased. 31 I. C. C., The Five Per Cent Case, 351, 387.

(bb) Each branch of service should contribute its proper share. 31 I. C. C. The Five Per Cent Case, 351, 392.

(cc) Cost of carrying passenger in sleeping car greater per passenger mile than in day coach. Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 658.

(dd) Increased cost of service incident to two-line haul may justify a rate somewhat higher than would be permitted via single line. Weatherford Chamber of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 666.

(ee) Number of cars handled and switching movements performed per transit car considered in determining cost of service to carrier. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 691, 695.

(ff) Meltage of ice in packages said to cause more rapid depreciation of refrigerator car. Kenner Truck Farmers' Asso. v. I. C. R. R. Co., 32 I. C. C. 1, 9.

(gg) Commission has declined in notable instances to allow economies of carriage to control in the matter of settling preferential rates. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 45o, 463.

(hh) Cost of service is usually so difficult of accurate determination that its use as a gauge in rate making must be limited. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 548, 466.

(ii) Distance, grade and curvature are important elements in cost of service. Class and Commodity Rates to Salt Lake City, 32 I. C. C. 551, 555.

(jj) Carriers should be permitted to compete for coast-to-coast traffic so long as it may be secured at rates which cover the out-of-pocket cost. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 622.

(kk) Increase in per diem charge for car equipment, wages, fuel and cost of railway material generally as justification for advance in rates. Proportional Commodity Rates Between Kerper and Wilson, Ohio, Unrep. Op. A-893.

§19. Credit.

(a) Credit of railroads has suffered from causes independent of rates. Five Per Cent Case, 31 I. C. C. 351, 419.

§20. Distance of Haul.

See Evidence, §15½ (f), §18 (ii), (x); Accounting, §6 (ef); Basing Points and Lines, §1 (ss); Blanket Rates, §18 (a); Differentials, §2½ (a), (b), (e), (c), §8 (f), (g), (j), (n), (o), (p); Routing and Misrouting, §4 (c); Switch Tracks and Switching, §4 (jj), (kk); Through Routes and Joint Rates, §6, §13 (y), (aa), (nn); Water Carriers, §7 (c), (d).

(a) Average distance of four lower Mississippi River crossings from New York City is 1,114 miles, and from seven upper crossings 1,098 miles. Mississippi River Case, 28 I. C. C. 47, 50.

(b) Mileages to various interior points are made upon constructive mileage allowed water carriers from Baltimore to Savannah, 250 miles, plus short-line mileage from that port. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 162.

(c) Difference of 32 miles on hauls ranging from 600 to 1,000 miles negligible. Montezuma v. C. of G. Ry. Co., 28 I. C. C. 280, 282.

(de) Relative unreasonableness is not proven here by comparisons of distances. Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 388.

(f) In the hauls of the length involved, ranging from 650 to 1,245 miles, a considerable addition in mileage could well be overlooked, especially where the necessity exists of maintaining points of production and consumption on an equality with their competitors. Lumber Rates. Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 475, 476.

(g) Percentage rates are based upon distance. Rates to the various percentage groups are determined by short-line mileage to the more impor-

tant points located within those groups. Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C. 511, 512.

(h) The short-line distance from New York to Springfield is only very slightly in excess of that to Peoria, and the average distance from the Atlantic seaboard to these two cities is approximately the same. Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C., 511, 513.

(i) Distance is an important element in determining whether routings are or would be satisfactory. U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 522.

(j) An unreasonable rate by the direct line cannot be allowed for the purpose of permitting the circuitous line to engage in the business at a reasonable profit. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 558.

(k) The average distance from Kansas City to Dallas-Fort Worth group is greater than to Texarkana and Shreveport. Texarkana takes same class rates as the Dallas-Fort Worth group. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 580.

(l) Complaint alleged that rates on locomotive and fittings and sawmill machinery from Lima, O., to Lockhart, Ala., were higher than from Lima to Bristol, N. H., Fargo, N. D., Savannah, Ga., Jacksonville and Pensacola, Fla., Mobile, Ala., and New Orleans, La., all of which are greater distances than from Lima to Lockhart. Here comparisons of rates to points far removed from the particular points with which the comparisons are made are not sufficient to establish rate to the given point is unreasonable. Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-154.

(m) Higher rate in effect on cottonwood from Annona, Tex., to Springfield, Mo., a less distance than from Shreveport, La., to Kansas City, Mo., a great distance. The points in question are not intermediate via the direct lines or usual routes of movement, and were established in order to meet competition. Complaint dismissed. Dodd v. T. & P. Ry. Co., Unrep. Op. A-223.

(n) Length of haul and volume of traffic are among the determining factors in arriving at cost. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(o) Ordinarily a local rail haul of 6 miles is entitled to consideration toward an additional charge. Metropolis Commercial Club v. I. C. R. R. Co., 30 I. C. C. 40, 43.

(p) Distance from New York City to Charleston, Savannah or Brunswick, by water, is assumed by carriers for purpose of effecting divisions of rates to be the equivalent of 250 miles of rail haul. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 178.

(q) The distance from New York City to Norfolk via the steamer lines is assumed by the carriers for the purpose of division of rates to be the equivalent of 160 miles of rail haul. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 163.

(r) Distance from New York City to Charleston, Savannah or Brunswick by water is assumed by carriers for purpose of effecting divisions of rates to be the equivalent of 250 miles of rail haul. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 178.

(s) There is much force in contention that rates from San Francisco should be less than from Portland. Distances are less and the operating conditions are more favorable. California-Colorado Lumber Rates, 30 I. C. C. 461, 463.

(t) Ordinarily rates for longer distances yield a lower per ton-mile revenue. Brownsville, Tex., Class and Commodity Rates, 30 I. C. C. 479, 485.

(u) General rule that differentials should decrease as distance increases. Lumber Rates to Knoxville, Tenn., 30 I. C. C. 524, 526.

(v) Fact that Commission compelled carrier to establish rates for comparatively shorter haul same as rates via longer routes, no reason for denying justice of establishing equal rates when distances are substantially equal. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576.

(w) Difference of 15 per cent in mileage does not justify a difference of 5c in the rates. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 580.

(x) Unless there are some other and at the same time convincing differentiating circumstances and conditions relative distances from the points of origin must control. Kansas Wholesale

Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 143.

(y) Distance is but one factor to be considered in the making of rates. Transportation conditions vary so greatly that a contrast with rates in different sections is of much less value than a comparison of rates in the same general territory. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 269.

(z) Ordinarily distance alone cannot determine the measure of rates, but glaring inconsistencies cannot be explained on the ground of varying transportation conditions. Commercial Club of Joplin v. M. P. Ry., 32 I. C. C. 226, 232.

(aa) Other things being equal, the longer the distance the less the revenue per ton mile. Northbound Rates on Hardwood, 32 I. C. C. 521, 529.

(bb) Neither ton-mile earnings nor distance can be accepted as the sole measure of reasonable or nondiscriminatory rate adjustments; but where other considerations are substantially similar these factors are entitled to great weight. Coffeyville Merc. Co. v. M. K. & T. Ry., 33 I. C. C. 122, 124.

(cc) It is a fundamental principle in rate making that differences in distance as between producing points or markets gradually lose their effect as the distance to destination increases. Grain Rates from Milwaukee, 33 I. C. C. 417, 424.

(dd) Considering length of haul and other transportation conditions, California may have more favorable freight rates than obtains in other states where minima are lower. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 37.

(ee) Water haul from Baltimore, New York, and Philadelphia to south Atlantic ports assumed to be equivalent to 250 miles of rail haul. Fourth Section Violations in the Southeast, 32 I. C. C. 61, 63.

(ff) Distance ordinarily can not alone determine measure of rates. Commercial Club of Joplin, Mo. v. M. P. Ry. Co., 32 I. C. C. 226, 232.

(gg) Ordinarily distance alone can not determine the measure of rates, but glaring inconsistencies can not be explained on ground of varying transportation conditions. Commercial Club of Joplin, Mo. v. M. P. Ry. Co., 32 I. C. C. 226, 232.

(hh) Through charge should bear a proper relation to distance. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 236.

(ii) Distance but one factor to the considered in making of rates. Underwood Veneer Co. v. A. A R. R. Co., 32 I. C. C. 265, 269.

(jj) Relatively equal rail distances from ports should have due weight in making of rates to Columbia and Augusta. Columbia Chamber of Commerce v. S. Ry. Co., 32 I. C. C. 504, 505.

(kk) Each point can not be given rates which bear the exact proportion to the Chicago rates which its distance from New York bears to the distance to Chicago from New York. Fox River Valley Mfrs. Asso. v. M. C. R. R. Co., 32 I. C. C. 547, 549.

(ll) Distance, grade and curvature are important elements in cost of service, especially on mountain lines. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 555.

(mm) Distance between Savannah or Charleston and New York is considered equivalent of rail haul of 250 miles. Rates on Clay from Points in Georgia, 32 I. C. C., 564, 567.

(nn) Distance between south Atlantic ports named and Boston constructive or prorating mileage is 300 miles. Rates on Clay from Points in Georgia, 32 I. C. C. 564, 567.

(oo) Rate to coast is low in many cases for haul involved. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 631.

(pp) Fact that no change was made in interstate fare reflecting reduction in mileage occasioned by change in location of station at Savannah, Ga., not found unreasonable. Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896.

(qq) Fact that no change was made in interstate fare reflecting reduction in mileage occasioned by change in location of station at Savannah, Ga., not found unreasonable. Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896.

(rr) Contention that rate on yellow pine lumber from Hot Springs, Ark., to Bristow, Va., should be higher via south-

ern lines than via the trunk lines, because of lesser density of traffic, held, to be fully offset by shorter mileage via southern lines. Valley Planing Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906.

(ss) Rate of 15c per 100 pounds on straw for an average distance of 225 miles not found unreasonable. Schreiber Hay & Grain Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-946.

(tt) Complainant attacked the rates charged for the transportation of four carloads of box shooks from Williams, Ariz., over interstate routes to Clifton, Ariz., as unjust and unreasonable. Three cars moved via Deming, N. Mex., at a rate of 69c per 100 lbs.; and one car via Phoenix, Ariz., and Lordsburg, N. Mex., at 87c for a haul of 571 miles. The interstate rate from Williams via Phoenix to Globe, Ariz., was 44c for 577 miles. Both destinations involved three-line hauls from Williams. The 69c rate via Deming yielded 1.893c per ton-mile, 46c per car-mile and $335.86 per car of 48,675 lbs. for a haul of 730 miles. The average revenue per ton of all freight on the A. & N. M. Ry.—the last link in the haul to Clinton—was $2.17; average per ton-mile, 2.71c. HELD that the rate from Williams to Clinton via Phoenix was unreasonable to the extent that it exceeded $8.80 per ton, and that via Deming was unreasonable to the extent that it exceeded $10 per ton. Reparation awarded. California Pine Box & Lum. Co., v. A. T. & S. F. Ry., 34 I. C. C., 257.

§21½. Emergency Rates.

(a) Rates on straw from Halls and Harbor, Mo., to Quincy, Ill., and Halls and Albany, Mo., to Peoria, Ill., not found unreasonable as compared with emergency rates from Cameron, Mo., to Quincy, Ill., made during crop shortage. Schreiber Hay & Grain Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-946.

§22. Equipment Furnished.

See Equipment.

(a) Cars that would be rejected for other traffic frequently are employed in transporting pig iron. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 602, 603.

(b) The added value of an adapted and solidified roadbed is no less real if charged to operating expenses than if charged to capital account. Lum. v. G. N. Ry., 33 I. C. C. 541, 550.

(c) Cost of refrigerator cars exceeds that of average freight car. Kenner Truck Farmers Asso. v. I. C. R. R. Co., 32 I. C. C. 1, 8.

(d) Equipment in which grapes are handled weighs considerably more than ordinary box car. Lindsay & Co. v. N. P. Ry. Co., 32 I. C. C. 287, 289.

(e) Live poultry traffic requires special equipment. Rates on Live Poultry in Western Trunk Line Territory, 32 I. C. C. 380, 383.

(f) No reason why underframes for steel cars can not be made at plant at which other parts of car are constructed and assembled. Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185, 187.

§22¼. Erroneous Rate.

See Erroneous Rate.

(a) A claim of mistake in the publication of rates which remain in effect for as long a period as two years is not persuasive. Commission will regard rate as one voluntarily and knowingly made. Errors should be discovered and eliminated within a reasonable time. Wausau Advancement Asso. v. C. & N. W. Ry., 28 I. C. C. 459, 460.

(b) The mere insertion in the tariff of an erroneous concurrence number did not invalidate the rates shown therein. Bartlett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A-203.

(c) A claim of mistake in the publication of rates which remain in the effect for as long a period as two years is not persuasive. The rate will be regarded as voluntarily and knowingly made. Errors will creep into tariffs, but should be discovered and eliminated within a reasonable time. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 591.

(d) Through carelessness or misunderstanding fresh fruits and vegetables from points in California to Seattle and Tacoma, Wash., have been accorded low rates on account of assumed effect of water competition. Rates on Fresh Fruits and Vegetables to Seattle, Wash., and other Points, Unrep. Op. A-912.

§22½. Expert Evidence.

(a) The testimony of a witness as to the correct rate on an interstate

shipment cannot be admitted over objection, but if not objected to it is evidence which cannot be disregarded. Wichita Falls & W. Ry. Co. of Tex. v. Asher (Tex., 1915), 171 S. W. 1114, 1117.

(e) A claim of mistake in the publication of rates which remain in effect for as long a period as two years is not persuasive. The rate will be regarded as voluntarily and knowingly made. Errors will creep into tariffs, but should be discovered and eliminated within a reasonable time. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 591.

§25½. Hearsay Evidence.

(a) Hearsay evidence adduced by complainants not sufficient to warrant a finding that weight ascertained on defendant's scale was in error. Miller & Co. v. C. T. W. Ry. Co., Unrep. Op. A417.

§27. Investment Relying on Rate.

See Evidence, §6; Advanced Rates, §5 (2), (b), §5 (4), (g), §13 (f); Discrimination, §5½ (f); Reasonableness of Rates, §14.

(a) The fact that contracts have been entered into on the basis of a lower rate will not of itself preclude the increasing of such rate. Rates on Crushed Stone from McCook and Thornton, Ill., 29 I. C. C. 136, 137.

(b) Where investments are permitted to be made upon the strength of a rate, the fact constitutes a strong admission upon the part of the carrier that the rate is reasonable; but the fact is merely evidentiary. Duluth Log Rates, 29 I. C. C. 420, 421.

(c) The circumstance as to investment by a shipper on the strength that a certain rate will continue is pertinent for the Commission to consider and may be a strong admission on the part of the carrier that the rate established is, on the whole, reasonable, but this fact is merely evidentiary, and there is some doubt as to whether it can be considered at all. Duluth Log Rates, 29 I. C. C. 420, 421.

(d) The fact that investments have been made upon the strength of a given rate may not be considered as controlling or preclude a defense in a rate found unreasonably low. Lumber Rates from Local Points to Chattanooga, Tenn., 29 I. C. C. 646, 647.

(e) Shippers have no interest in a rate by reason of contract or because of investments made under an existing rate, and such facts standing alone would not preclude the raising of an unreasonably low rate. Chattanooga Log Rates, 30 I. C. C. 36, 39.

(f) Fact that contracts have been entered into on the basis of a lower rate does not of itself preclude the increasing of such rate. Rates on Crushed Stone, 29 I. C. C. 136, 137.

(g) The fact standing alone that a shipper made investments under an existing rate does not preclude the raising of a rate if the same were found unreasonably low. Chattanooga Log Rates, 30 I. C. C. 36, 39.

(h) Fact that new plant was built upon assurance from carriers that a lower rate would be established, not in and of itself sufficient ground for finding the rate unreasonable. Meridian Fertilizer Factory v. L. & N. R. R. Co., 30 I. C. C. 494, 497.

(i) While the Commission always gives due weight to the fact that business has grown up under a particular rate adjustment, shippers have no vested interest in the maintenance of existing rates because of investments made under those rates which precludes increasing the rates if they are unreasonably low. Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 14.

(j) Shippers have no vested interest in maintenance of existing rates by reason of investments made under those rates which precludes increasing rates if unreasonably low. Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 14.

(k) A complainant is not entitled to former rates because of the magnitude of its investment and its reliance on such rates in making it. Brantley Co. v. A. C. R. R., 34 I. C. C.,21, 24.

(l) Where, upon the strength of a given rate, capital has been invested and industrial conditions have been established, the rate can not be discontinued without taking into account its effect upon those conditions. But it has never been said that there was any absolute rule requiring the indefinite continuance of such a rate. It is always a question of what, under all circumstances, is just

and reasonable. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 53.

§28. Local Rates and Combinations.

(a) A road is built and operated as a whole, and local rates are not to be made with respect to difficulties of each particular portion, charging cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 569.

(b) Local traffic cannot be compelled to bear an undue burden of the expense of construction or maintenance of an expensive piece of road or a bridge or a tunnel. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 569.

(c) A carrier has no right to single out a piece of expensive road and make the local traffic bear an undue portion of the expense of its maintenance or construction. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 569.

§29. Long Continuance of Voluntary Rate.

See Evidence, §68; Advanced Rates, §5 (2), (w); Discrimination, §5½ (a); Reasonableness of Rates, §16.

(a) Third-class rates had been in effect for many years and not found unreasonable. In re Basket Rates from Points East of to Points West of the Missouri River, Unrep. Op. A490.

(b) The long maintenance of a given rate is an admission of its reasonableness, and where, on the strength of a given rate, capital has been invested and industrial conditions have become established, it cannot be discontinued without taking into account its effect upon such commercial and industrial conditions. But there is no absolute rule requiring the indefinite continuance of such a rate; it is always a question of what, under all the circumstances, is just and reasonable. Lumber Rates, S. Ry. Points to Eastern Points, 31 I. C. C. 244, 253.

(c) The long-continued maintenance of a certain rate raises a presumption that it is fully compensatory. Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 149.

(d) Maintenance of present basis of rates from Buffalo and other Lake Erie ports for nearly four years without protest leads to the very reasonable presumption that it has operated without serious prejudice to any community. Grain Rates to Pittsburgh, 30 I. C. C. 383, 384.

(e) Fact that rates have been long maintained and that the volume of traffic has increased in recent years raises a strong presumption that they are reasonable and profitable to the carriers. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515.

(f) Fact that defendant voluntarily maintained the old rates for more than three years tends to show that those rates were reasonable. Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 706.

(g) Undoubtedly the fact that a rate has been voluntarily maintained by a carrier for a period of years is evidence tending to show that it is reasonably remunerative, and when it is sought to be increased the burden on the carrier would seem to require stronger proof of justification than in a case where the proposed increase relates to a rate that has been in effect but a short time. It not infrequently occurs, however, that increases in rates that have been maintained for many years are found to be amply justified. Freight Rates from Minnesota Points, 32 I. C. C. 361, 364.

(h) Long maintenance of rates must also be forceful in considering reductions. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 625.

(i) The fact that a rate has been voluntarily maintained by carrier for a period of years is evidence tending to show that it is reasonably remunerative. Freight Rates from Minnesot:. Points, 32 I. C. C. 361, 364.

§30. Low Rate in Opposite Direction.

(a) Westbound class rates to the river differ from eastbound rates from same river points. Interior Iowa Cities Case, 28 I. C. C. 64, 72.

(b) Rates on Volco from Wichita to St. Louis should be the same in the reverse direction. Volco Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 289, 291.

(c) Complainant, a Savannah buggy manufacturer, attacked the rate of $1.91

per 100 lbs. on carload shipments of buggies from Dallas, Tex., to Savannah, Ga., as unreasonable compared with the rate of 83c on similar shipments between the same points in the opposite direction. The rate of $1.91 was made up of the sum of intermediates, $1.15 from Dallas to Memphis, plus 76c beyond. Complainant enjoyed a peculiar advantage in shipping buggies to Dallas from Savannah, the 83c rate being but 4c in excess of the rate from factories several hundred miles nearer Dallas. No buggies were manufactured at Dallas, and buggies were seldom shipped from that point. HELD, that the evidence failed to show that the rate charged complainant was unreasonable. Complaint dismissed. Hull Vehicle Co. v. Southern Ry. Co., 28 I. C. C. 619.

(d) Rate on petroleum and its products from Marshalltown, Ia., should not exceed rate in the opposite direction. Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707.

(e) Advantage of heavier loading in tank cars north bound than in box cars south bound offset by empty back haul of tank cars, while box cars may be reloaded. Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707, 708.

(f) Complainant, a manufacturer of petroleum products at Marshalltown, Ia., attacked the fifth-class rate of 22c per 100 lbs., yielding a per-ton-mile revenue of 1.58c, for the transportation of petroleum and its products, in carloads, from Marshalltown to Kansas City, a distance of 279 miles, as unreasonable to the extent that it exceeded the rate of 17c, yielding a per-ton-mile revenue of 1.22c on shipments in the opposite direction. Complainant met the competition of Kansas City manufacturers throughout Iowa, Kansas and adjacent states, though somewhat handicapped by reason of the fact that its works were remote from the sources of supply of its crude materials. The north-bound movement of traffic was much heavier than the south-bound, and the loading of cars heavier, tank cars being used for the former, while box cars were used for south-bound shipments; but the advantage in the use of tank cars was offset by the empty back haul. The Commission had prescribed a rate of 24.3c from Chicago to Omaha, 493 miles; 19c from Coffeyville, Kan., to Memphis, Tenn., 469 miles, and 17c from Coffeyville to Omaha, 362 miles. HELD, that the rate of 22c per 100 lbs. from Marshalltown to Kansas City was unreasonable to the extent that it exceeded 17c. Reparation awarded. Marshall Oil Co. v. C. G. W. Ry. Co., 28 I. C. C. 707.

(g) Westbound rate on corn from Missouri River points to Gardiner, Mont., is 50c per 100 lbs.; the eastbound rate between the same points is only 35c. Not found unreasonable, and complaint dismissed. Board of R. R. Com'rs of Mont. v. N. P. Ry. Co., Unrep. Op. A-157.

(h) A great volume of traffic in one direction may well excuse lower rates in that direction than are charged upon sporadic shipments in the opposite direction. Board of R. R. Com'rs of Mont. v. N. P. Ry. Co., Unrep. Op. A-157.

(i) Rate on hickory spokes from Somerset, Ky., to Cincinnati, O., higher than from Cincinnati, O., to Somerset. HELD, not unreasonable. Zwick & Greenwald Wheel Co. v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-259.

(j) After hearing, carriers reduced rates on potatoes and other vegetables to equal rates in the opposite direction. R. R. Com. of La. v. T. & P. Ry. Co., Unrep. Op. A-311.

(k) While value of carload of tin cans is only a fraction of the value of a carload of condensed milk, eastbound rate on tin cans produces car revenue which is materially less than the westbound rate on condensed milk. Pacific Creamery Co. v. S. P. Co., Unrep. Op. A-356.

(l) The fact that there is a rate of 7.5 cents from Titusville, Pa., to Columbiana, O., is not sufficient to establish that the rate of 8.5 cents in the reverse direction is unreasonable. Bessemer Refining Co. v. P. Co., Unrep. Op. A457.

(m) The mere fact that on westbound business carriers are parties to transcontinental rates which are similar to those sought on eastbound traffic does not prove the unreasonableness of the eastbound rates, especially where the westbound adjustment results from the operation of the fourth section. Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265, 269.

(n) Rates on locomotives on flat cars

from Straight Fork, Tenn., to Cincinnati, Ohio, higher than rates in reverse direction. Subsequent to movement of shipment rates were reduced. Reparation awarded. Shea Bros. v. T. Ry. Co., Unrep. Op. A-558.

(o) Class rate applied on toe calks from Portland, Ore., to Joliet, Ill., not found unreasonable because it is higher than commodity rate in the opposite direction. Reparation denied. Franklin Steel Works v. O.-W. R. R. & N. Co., Unrep. Op. A-686.

(p) A class rate applicable to all commodities of the class cannot be found unreasonable because it is higher than the commodity rate in the opposite direction. Franklin Steel Works v. O.-W. R. R. & N. Co., Unrep. Op. A-686.

(q) Eastbound rate on toe calks from Portland, Ore., to Joliet, Ill., not found unreasonable as compared with westbound rate, circumstances and conditions surrounding movement being different. Franklin Steel Works v. O.-W. R. R. & N. Co., Unrep. Op. A-686.

(r) Rates from Charlotte, N. C., to Athens, Ga., are 1c lower than those in opposite direction, this difference being to place Augusta and Athens on a parity and being favorable to complainant. Rates to and from Charlotte not found unreasonable. Barnhardt Mfg. Co. v. S. Ry. Co., Unrep. Op. A-698.

(s) Corn rates generally apply on oats via defendant's lines but at time shipments moved no rates were in effect on oats from Oklahoma to Kansas points involved. Reparation awarded on basis of rates in opposite direction. Pittman & Harrison Co. v. St. L. I. M. & S. Ry. Co. Unrep. Op. A-732.

(t) Rates on oats northbound from northwestern Oklahoma points to various Kansas points found unreasonable and southbound rates over same route prescribed for future. Reparation awarded. Pittman & Harrison Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-732.

(u) Three rates on potatoes between Jacksonville and Lemon City, Fla. Rate charged found unreasonable and rate prescribed not to exceed 46c per sack of 165 lbs. Reparation awarded. Du Plus v. F. E. C. Ry. Co., Unrep. Op. A-739.

(v) Traffic via line of defendant from Evansville and Henderson can be handled eastbound only via Louisville, while that from Louisville can be handled westbound only via Henderson and Evansville. Bower & Co. v. L. H. & St. L. Ry. Co., Unrep. Op. A-744.

(w) The fact that a rate between two points is higher on traffic moving in one direction than in the opposite is not of itself proof of the unreasonableness of the higher rate. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 259.

(x) It is well established that a rate between two points in one direction is not necessarily the measure of a reasonable and non-discriminatory rate in the opposite. Rate on windmills and towers from Superior, Wis., to Washington, Iowa, not found unreasonable. Duplex Mfg. Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-858.

(y) Contention that rates on emigrants' movables from Fort Lauderdale, Fla., to Tushka, Okla., were unreasonable because in excess of those applied to previous shipment from Tushka to Fort Lauderdale, not sustained. Lewis v. A. C. L. R. R. Co., Unrep. Op. A-883.

§31. Manufactured Product.

See Advanced Rates, §18 (5), (a); Classification, §10.

(a) Brooms, as a manufactured article, should, in accordance with accepted principles, pay a rate higher than broom corn, which is a raw material. Broom Rates to Colorado Points, 28 I. C. C. 310, 311.

(b) Different markets available for manufactured and by-products. Under ruling of Commission only manufactured products entitled to transit rates to billed destination. Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 365.

(c) Corn when manufactured into glucose produces about 75 per cent glucose and 25 per cent of various by-products. Clinton Sugar Refining Co, v. C. & N. W. Ry. Co., 28 I. C. C. 364.

(d) It never happens, except under very abnormal conditions, that the rate on malt is lower than on the grain out of which the malt is manufactured. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 551.

(e) Rate charged on glucose, the manufactured product, is 70 per cent greater than the rate charged on corn,

the raw material. National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 674.

(f) The general practice of carriers to provide lower rates on raw materials than on products of a finished article is not the practice in respect to crude petroleum in C. F. A. territory. Bessemer Refining Co. v. P. Co., Unrep. Op. A457.

(g) In the absence of some positive showing, an adjustment under which higher charges are provided for a manufactured product, such as flour, than for a raw material, such as wheat, is not to be condemned merely because of other or different practices in other communities, nor will the Commission require carriers to modify an existing arrangement of rates long in effect and apparently fairly adapted to the needs of the communities and interests affected, except upon substantial proof of its unreasonableness or of unjustifiable injury resulting therefrom. Stuart's Draft Co. v. S. Ry. Co., 31 I. C. C. 623, 631.

(h) The theory upon which the carriers make the bituminous coal rates apply to industries is that the inbound service is usually compensated by an outbound haul on manufactured products. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 74.

(i) Flour is an article finished and ready for human consumption, while malt is merely one material used in producing an article of human consumption, i. e., beer. Malt Rates to Texas Points, 30 I. C. C. 385, 387.

(j) Rate on club-turned handles, in the rough, from West Point, Miss., to Cairo, Ill., should not exceed the rate on lumber of kind from which handles are made. Clark-Danforth Handle Co. v. I. C. R. R. Co., Unrep. Op. A-570.

(k) Reparation awarded on basis of lower rate which should have applied on logs from Red Bay, Ala., to Paducah, Ky., when manufactured products were shipped from Paducah via defendant's line. Paducah Box & Basket Co., Inc., v. I. C. R. R. Co., Unrep. Op. A-582.

(l) The Commission is not to be understood as laying down as a correct principle of rate making one which determines the measure of inbound rates on raw material by the compensation received for subsequent independent movements of outbound manufactured products. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 165.

(m) Carriers are not justified in establishing inbound rates predicated upon prospective additional revenue from outbound shipments of manufactured products. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 165.

(n) Because there is shown an identity of commodity at point of origin it does not follow that there is an identity of elements of carriage to destination when raw material is milled into different products. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 593.

(o) Higher rates for a manufactured product than for raw material not condemned because of different practices in other communities. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 631.

(p) An adjustment by which higher rates are provided for product than for raw material, not to be condemned merely because of the other or different practices in other communities. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 631.

(q) Commission does not say that carriers are justified in establishing inbound rates predicated upon prospective additional revenue from outbound manufactured products. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 165.

(r) Ordinarily rate on raw material should not exceed that on the manufactured product. Knight Woolen Mills v. C. & N. W. Ry. Co., 32 I. C. C. 490, 491.

§32. Market Competition.

See Commodity Rates, §1 (a).

(a) Columbia as well as Augusta has competition to meet from Charleston and from Savannah, and its ability to meet this competition, so far as rates are concerned, is generally less than Augusta's on commodities from the East and on classes and commodities from Cincinnati-Louisville. Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 346.

(b) Manufacturers and dealers at Elgin are in keen competition with manufacturers and dealers at Aurora. Elgin Commercial Club v. B. & M. R. R., 28 I. C. C. 380, 381.

(c) Douglas is at a material disadvantage in the competition for business of the region tributary to it and its neighboring rivals. It may not justly be denied relief from the handicap under which it labors, because of the circumstance that up to the present it has done well in spite of the handicap. Mayor and Council of Douglas v. A. B. & A. R. R. Co., 28 I. C. C. 445, 450.

(d) Market quotations offered to show advantage enjoyed by Omaha over Kansas City. There is no difference in the intrinsic value of like grain in the two markets, and it is not within the Commission's province to adjust rates merely to equalize market conditions. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 686.

(e) To a certain extent carriers are justified in placing competitive markets upon an equal basis. Minneapolis Civic & Commerce Asso. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 672.

(f) Savannah, Ga., next to Gavelston, Tex., is the largest cotton market in the world. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 170.

(g) New Orleans is the largest market and milling point for rice, quotations there governing prices throughout the country. Memphis Freight Bureau v. I. C. R. R. Co., 30 I. C. C. 471, 472.

(h) To relieve congestion at Duane street and facilitate the handling not only of onions, but of all other traffic, the Erie has established the onion market at its Pavonia avenue station in Jersey City. Onion Rates to New York, N. Y., 30 I. C. C. 528, 529.

(i) There are more bananas imported through New Orleans than through any other port in the United States. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 627.

(j) To a certain extent carriers are justified in placing competitive markets upon an equal basis. Minneapolis Civic & Commerce Asso. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 672.

(k) Augusta, Ga., is the next to the largest inland cotton market in the country. Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 705.

(l) A rate adjustment should not be so made that shippers at one point or certain points can control the field in a territory properly tributary to another shipper. Kansas Wholesale Grocer Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 141.

(m) Profit in freight rate becomes an added factor in competition for commercial coal business. Coal and Oil Investigation, 31 I. C. C. 193, 213.

(n) Among mine operators contracts with railroads often result in prices no higher than cost of production, and sometimes less. Coal and Oil Investigation, 31 I. C. C. 193, 195.

(o) Spruce in active competition with hemlock. Lumber Rates from Southern Ry. Points to Eastern Points, 31 I. C. C. 244, 250.

(p) Joplin, Mo., is principal competitor of Muskogee in distribution of news print paper, Kansas City next. Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 289, 290.

(q) Jobbing business of Wichita done in competition with Kansas City and other Missouri River points. Wichita Business Asso. v. C. & O. W. Ry. Co., 31 I. C. C. 323, 324.

(r) Jobbing points not concerned as to measure of the rate itself but interested solely as to relative adjustment between them. Rates on Sugar, 31 I. C. C. 495, 509.

(s) Efforts to equalize market competition may not justify or require rates unreasonably low nor permit unjust discrimination. Hide Rates to Los Angeles, Cal., 31 I. C. C. 633, 636.

(t) In the distribution of strawberries, Helena and Butte jobbers compete with each other in the same general territory, and Helena jobbers are compelled to shrink their profits on account of the higher carload rate. Rates not found unreasonable. Lindsay & Co., Ltd. v. Wells Fargo & Co., Unrep. Op. A-755.

(u) A given difference of quality in articles of same class and general description does not imply a fixed price relation in different markets or even same markets since relative supply and demand of several grades vary from day to day and from market to market. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 33.

(v) Only some peculiar circumstances or condition can warrant the main-

tenance of a commodity rate from a few points of manufacture in a limited locality. Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

(w) Commission will not require carriers to maintain rates voluntarily instituted or maintained because of industrial conditions which otherwise would be regarded as exceptionally low. Northbound Rates on Hardwood, 32 I. C. C. 521, 529.

(x) Certain forms of soda produced at Saltville, Va., which are said to compete with "spotless cleanser" as cleansers; but amount of competition is negligible and rates from Saltville do not injure complainant at Bristol, Va.-Tenn. Reynolds Corporation v. N. & W. Ry. Co., Unrep. Op. A-803.

(y) Rate on canned goods from Baltimore and other points in Maryland to Alexandria, La., not found unreasonable or unduly prejudicial as compared with rate to competing points in same general territory. Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955.

§34. Mineral Lands Owned by Carrier.

(a) The Southern Pacific Co. and the A. T. & S. F. Ry. Co. have enormous timber holdings in the West. Pridham Co. v. S. P. Co., 30 I. C. C. 117, 120.

§34¼. Mixed Shipments.

(a) There is no provision of the Act and no rule of the Commission which prescribes what rate shall apply on a combination of commodities made in course of transportation. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 138.

§34½. Motives.

See Evidence, §56 (b); Advanced Rates, §14½; Reasonableness of Rates, §18½.

(a) Intent or motive actuating carriers in the establishment of rates can not outweigh other consideration when determining their present reasonableness. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 164.

(b) Carriers may properly do many things which the Commission will not compel them to do. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 468.

(c) Questions of policy primarily for railroads themselves. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 468.

§39. Notice.

(a) Where a lower export rate had been in effect for more than six months prior to the date of the first shipment, complainant was charged with notice thereof. Port Arthur Rice Milling Co. v. T. & Ft. S. Ry. Co., 28 I. C. C. 697, 700.

§40½. Origin of Traffic.

See Origin of Traffic.

(a) A carrier should not be permitted to retain to itself the lumber market at points on its line for the benefit of producing points on its line, to the exclusion of producing points on other lines. Lumber Rates, Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 474.

(b) Texarkana, Ark., and Texarkana, Tex., are physically one continuous city. Texarkana Freight Bureau v. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 571.

(c) The right of a carrier to maintain for itself the long haul on traffic which it originates is well established. Wheeler Lumber Bridge & Supply Co. v. A. T. & S. F. R. R. Co., 30 I. C. C. 343, 344.

(d) A carrier cannot expect wholly to retain traffic from points into which it has first extended its line. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 578.

(e) A carrier cannot reserve to itself the long haul if to do so works to the detriment of shippers. Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 591.

(f) If a railroad has traffic in its possession it shall be allowed to handle it by its own line as far as it can unless the public interest will suffer thereby. Marble Rates from Vermont Points, 29 I. C. C. 607, 608.

(g) Commission has no right to deprive originating carrier of its long haul. Lumber Rates from Oregon and Washington, 29 I. C. C. 609, 612.

(h) A carrier is not justified in attempting to restrict traffic to movement between points on its own line.

Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 677.

(i) Commission approves a settlement which relieves one carrier of traffic it does not want when entirely satisfactory to the shipper. In re Wrapping Paper Rates from East Moss Point, Miss., Unrep. Op. A546.

(j) Carriers cannot make more favorable rates from industries upon their own lines to the point of establishing charges so disproportionate as by comparison to be unjust or unreasonable. Low Moor Iron Co. of Virginia v. C. & O. Ry. Co. 30 I. C. C. 615, 619.

(k) Only some peculiar circumstance or condition can warrant the maintenance of a commodity rate from a few points of manufacture in a limited locality, while the class rate basis as to same commodity is maintained from all other points. Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

(l) Carrier may not by rate adjustments reserve territory it serves for plants located on its own lines. Oklahoma Portland Cement Co. v. A. L. & G. Ry. Co., 32 I. C. C. 221, 225.

(c) Rate on bar iron from Fort Smith, Ark., to Mena, Ark., found unreasonable to the extent that it exceeded 23 cents per 100 pounds, which is prescribed for future whether such shipments have moved to Fort Smith from beyond or have originated at Fort Smith. Reparation awarded. Beck & Corbitt Iron Co. v. K. C. S. Ry. Co., Unrep. Op. A-836.

§41. Original Cost of Road.

See Reasonableness of Rates, §15.

(b) A carrier cannot expect wholly to retain traffic from points into which it has first extended. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 578.

§42¼. Paper Rates.

See Reasonableness of Rates, §24.

(a) Rate between points under which there is no movement are not comparable. Pacific Creamery Co. v. S. P. Co., Unrep. Op. A-356.

(b) Paper rates should be scaled in same manner as other rates when they cease to be. Rates on Potash and Other Commodities, 29 I. C. C. 626, 628.

(c) It is the duty of the Commission to pass upon a rate, though it is a paper rate, on which no business moves, when carriers ask authority to continue its publication and to be allowed to apply it should business be obtained by them. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 631.

(d) Rates on sulphuric acid from Argentine, Kans., and Kansas City, Mo., to Muskogee, Okla., not found unreasonable as compared with rates to Arkansas points which are said to be paper rates. Muskogee Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-805.

§43. Past Rates.

See Advanced Rates, §5 (4); Switch Tracks and Switching, §3 (j).

(a) Time has undoubted weight in rate matters. Mississippi River Case, 28 I. C. C. 47, 54.

(b) The rate on steam coal to Nashville from western Kentucky mines has remained unchanged for 25 years. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 536.

(c) Change in long-standing relation of proportional rates on grain from upper and lower Mississippi River crossings not justified. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555.

(d) While no other manufacturers having joined in this complaint, or made independent complaint, it is possible that they may be materially affected by a disturbance of an adjustment that has continued for so many years. National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 675.

(e) Where a particular rate has been in effect for several years, the presumption is that it is compensatory, and it will not be disturbed except upon proof that present conditions are such as to demand it. Chicago Switching Charges, 28 I. C. C. 677, 679.

(f) Substantially same adjustment of rates has been in effect from all Colorado common points for 20 years. Pueblo Commerce Club v. D. & R. G. R. R. Co., 31 I. C. C. 133, 135.

(g) Rates between New York and Chi-

cago have been in effect for more than a quarter of a century, looked upon as general rate standard by which other rates may be measured. Five Per Cent Case, 31 I. C. C. 351, 353.

(h) Statute not made to apply where increased rate merely restored a former rate that had long been maintained. Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 536.

(i) Disparity of ton-mile revenue can not of itself justify condemnation of rate structure of long standing. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 627.

(j) If long maintenance of rates raises a presumption of reasonableness which is given weight in opposition to proposed increases by carriers it must also be forceful in considering reductions. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 625.

(k) A carrier may not rightfully use corporate funds for political purposes. Financial Investigation of N. Y. N. H. & H. R. R. R. Co., 31 I. C. C. 32, 61.

(l) Carriers will not be required to maintain low rates voluntarily instituted or maintained because of industrial conditions. Northbound Rates on Hardwood, 32 I. C. C. 521, 529.

(m) When important and long-standing relation is sought to be changed, justification must be clear and convincing. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594.

§43½. Permanent Improvements

See Accounting, §1 (b), (d); Advanced Rates, §2½ (d); Divisions, V (e); Switch Tracks and Switching, §4 (v).

(a) Dividing the valuation placed upon the bridge by the assesed valuation of defendant's line in Iowa and Illinois, it appears that such valuation represents the assessed value of 66½ miles of line. East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427.

(b) Ownership of bridge does not render carriers using it any the less liable to contribute to its maintenance in proportion to the use made of it. Norman Lumber Co., v. L. & N. R. R. Co., 29 I. C. 565, 570.

(c) Distance across Ohio River bridge at Cairo deemed 112 constructive miles. Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 591.

§44. Previous Haul on Raw Material.

(a) Contention that lower rate should be established because carriers receive haul of tin plate to Los Angeles, from which cans are manufactured, not sustained. Pacific Creamery Co. v. S. P. Co., Unrep. Op. A-356.

(b) While the fact that a given line both brings in the raw materials for a furnace and likewise serves the community which such furnace has built up may warrant such line in making some moderate allowance in the construction of its transportation charges, it cannot proceed to the point of establishing charges so disproportionate as by comparison to be unjust or unreasonable. Low Moor Iron Co. v. C. & O. Ry. Co., 30 I. C. C. 615, 619.

(c) There are many things carriers may do which the Commission will not compel them to do. Questions of policy are primarily for the railroads themselves to determine, and so long as they do not infringe the provisions of the law they are at liberty to adopt such policy as seems to them most fitting; it is for the Commission to determine when the law has been overstepped and then prescribe new and lawful rates or practices. Am. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 468.

(b) Ordinarily the rate on raw material should not exceed that on the manufactured product. Knight Woolen Mills v. C. & N. W. Ry. Co., 32 I. C. C. 490, 491.

§44½. Public Interest.

See Advanced Rates, §2½ (c), (bb), §14; Any Quantity Rates, i (p); Classification, §5 (t), (q).

(a) It is in the public interest, as well as in the interest of carriers, that traffic should be handled by reasonably direct routes which can be operated at the least expense. Haverhill Box Board Co. v. B. & A. R. R. Co., 28 I. C. C. 336, 338.

(b) Public does not appear to be affected by cancellation of provision for absorption of charges of the Chicago River & Indiana R. R. for car-float deliv-

eries in Chicago. Chicago Lighterage Charges, 28 I. C. C. 390, 395.

(c) Public interest in payment of allowances to industrial roads. Industrial Railways Case, 29 I. C. C. 212, 214.

(d) Public interest is advanced by the reasonable success of railroad investments under rate schedules reasonable to shippers. Industrial Railways Case, 29 I. C. C. 212, 218.

(e) Public interest considered in determining rate question. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 380.

(f) The construction of the road has caused the development of the country through which it runs, and the interest of the territory requires that the road be operated, receiving sufficient returns to enable it to meet fully its obligations to the people whom it serves. Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491.

(g) The southern lines would apply the restricted theory of non-absorption of switching wherever they can and would conform to a different practice at places whose policy they cannot seriously influence. Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 558.

(h) The means of transportation are fundamental and indispensable agencies in our industrial life and for the common weal should be kept abreast of public requirements. Five Per Cent Case, 32 I. C. C. 325, 330.

(i) Public interest considered in passing upon reasonableness of proposed revisions. Lumber Rates Southern Ry. Points to Eastern Points, 31 I. C. C. 244, 253.

(j) Carriers owe to the public an efficient service at reasonable rates. Five Per Cent Case, 31 I. C. C. 351, 359.

(k) Question of developing wheat-growing area one of national policy which Commission can hardly consider in gauging reasonableness of existing rates. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 653.

(l) The means of transportation are fundamental and indispensable agencies in our industrial life and for the common weal should be kept abreast of public requirements. Five Per Cent Case, 32 I. C. C. 325, 330.

(m) Each case must be tested by needs and convenience of community served. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 573.

(n) Lies in direction of maintenance of rates from intermediate points no higher than from Atlantic coast. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 619.

(o) If a railroad has traffic in its possession, it should be allowed to handle it by its own line as far as it can, unless public interest will suffer thereby. Cancellation of Routes in Connection with Wool and Mohair to Eastern Points, Unrep. Op. A-844; Markley & Co. v. A. C. L. R. R. Co., Unrep. Op. A-845.

§45. Profit of Shipper.

See Advanced Rates, §2 (b), §13; Discrimination, §5½ (h); Reasonableness of Rates, §2 (e), (cc), §12½ (j), (k), §27.

(a) If, when viewed in the light of those considerations which enter into proper rate making, a particular rate is fair and just for the service performed, the price at which the shipper markets his product cannot be accepted as the controlling factor in fixing the rate. Oklahoma-Colorado Potato Rates, 28 I. C. C. 298, 300.

(b) Slight difference in the rate are not felt by the producer of grain to the same extent that they are by many other industries. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 559.

(c) Carriers nor Commission may not predicate rates upon necessities of shippers. Hide Rates to Los Angeles, Calif., 31 I. C. C. 633, 635.

(d) The Commission will not require carriers to maintain low rates on a commodity because of business depression. Northbound Rates on Hardwood, 32 I. C. C. 521, 528.

§47. Rate via Competing Carrier.

See Discrimination, §4 (gg); Reasonableness of Rates, §2 (q), §27½; Reparation, §11; Through Routes and Joint Rates, §13 (v), §15½.

(a) Reparation awarded on basis of reduced rate established by carriers via competing lines subsequent to movement. No order entered establishing lower rate via route of movement, as record does not indicate neces-

sity therefor. Lindsay & Co., Ltd., v. C. M. & St. P. Ry. Co., Unrep. Op. A-219.

(b) Lower joint rate via competing line than combination rate in effect via route of movement. Combination rate not found unreasonable. Lindsay Bros. v. C. B. & Q. R. R. Co., Unrep. Op. A-230.

(c) Lower rate in effect via lines of competing carrier. Higher rate not found unreasonable. Vehicle Supply Co. v. L. Ry. & N. Co., Unrep. Op. A-252.

(d) Reparation denied on basis of rates in effect via other than connecting lines participating in movement. Matthiessen & Hegeler Zinc Co. v. C. & N. W. Ry. Co., Unrep. Op. A-273.

(e) Rates on apples from McClellands, Colo., to Muskogee and McAlester, Okla., not found unreasonable as compared with rates via competitive routes with greater distances. Stewart v. M. K. & T. Ry. Co., Unrep. Op. A-297.

(f) The fact that two roads use same tracks does not follow same rate applies. Hedden-Clark Lumber Co. v. B. & O. R. R. Co., Unrep. Op. A-301.

(g) Rate reduced via competitive route, but not via route of movement. It is well settled that a rate via one route is not shown to be unreasonable merely because there is a lower rate via another route. West Co. v. I. & G. N. R. R. Co., Unrep. Op. A-317.

(h) Lower rate in effect on cottonseed meal and cake between same points via competitive lines. Rate not found unreasonable and complaint dismissed. Steinhardt & Co. v. T. & P. Ry. Co., Unrep. Op. A-325.

(i) Reparation denied on basis of lower refrigeration charge on strawberries, cantaloupes and peaches from Van Buren, Ark., to points in Iowa via competing line. Lagomarcino-Grupe Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-352.

(j) That joint rate with milling in transit privilege in effect over other lines on grain from Chicago, Ill., to Louisville, Ky., destined to points in Virginia, does not necessarily attach presumption of unreasonableness. Templeton & Sons v. C. I. & S. R. R. Co., Unrep. Op. A-362.

(k) Rates in effect via one line are not necessarily the measure of reasonable rates via another line. Standard Oil Co. v. P. Co. Unrep. Op. A485.

(l) The distance via a short line cannot be used for a basis to fix rates via a longer line. Helmers Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A542.

(m) Rate on walnut logs from Jackson, Tenn., to E. St. Louis, Ill., found unreasonable to the extent that it exceeded the rate in effect via competing lines. Reparation awarded. Brittain v. N. C. & St. L. Ry. Co., Unrep. Op. A-581.

(n) The Commission has held that where the direct line observes the rule of the fourth section, a competing line whose mileage exceeds that of the direct line by not less than 15 per cent should be permitted to meet the rate without reducing its charges to intermediate points, provided the rates to these points are reasonable. Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-601.

(o) It cannot be said that the rate established by a short line is necessarily excessive simply because it is no lower than a rate previously in effect via a longer line, for it is possible that the rate via the longer line was sufficiently low to warrant its adoption as a reasonable rate by the shorter line, and the traffic density of the new line must also be taken into account. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 648.

(p) Rate charged on sawn building marble from Manchester, Vt., to Port Morris, N. Y., not found unreasonable as compared with lower rate via another line. Norcross-West Marble Co. v. Rutland R. R. Co., Unrep. Op. A-713.

(q) The mere fact that there was a lower rate in effect via another route is not, in and of itself, sufficient to justify a finding that rate via route of movement was unreasonable or unjustly discriminatory. North American Smelting Co. v. B. & O. R. R. Co., Unrep. Op. A-804.

(r) Contention that because C. M. & St. P. Ry. uses tracks of N. P. Ry. between Minnesota Transfer and Duluth, the rate via the former route should not exceed the lower rate via the latter, not sustained. Plymouth Clay Products Co. v. Ft. D. D. M. & S. R. R. Co., Unrep. Op. A-833.

(s) Mere fact that there was a lower rate in effect via a competing line does

not warrant condemnation of rate charged. Caudle v. U. P. R. R. Co., Unrep. Op. A-870.

(t) Water-and-rail rates from New York, Philadelphia, Baltimore and interior points to Bluefield, W. Va., reduced to basis of rates prescribed by Commission via all-rail route. Reparation denied on shipments made when higher rates were in effect. Woolworth Co. v. Old Dominion S. S. Co., Unrep. Op. A-901.

(u) Fourth-class rate on bi-chromate of soda from Niagara Falls, N. Y., to Milwaukee, Wis., not found unreasonable as compared with lower rate via another route. Trostel & Sons Co. v. L. V. R. R. Co., Unrep. Op. A-932.

(v) Rate on canned goods from Baltimore and other Maryland points to Alexandria and Shreveport, La., and Little Rock, Ark., is based upon the rate to Vicksburg and Natchez, Miss., via direct lines through south Atlantic ports. Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955.

§49. Reproduction Value of Road.

(a) No hard and fast rule has been established for determining for all roads the fair value of their property. Lum. v. G. N. Ry., 33 I. C. C., 541, 549.

(b) Ever since the Commission has been in existence it has felt the need of accurate data regarding the value of 'carriers' properties, but it has been compelled to decide the most important rate cases as they arise without the assistance of reliable data of this character. It must have been the intention of Congress that it should do so, otherwise Congress would have required a valuation to be made long ago. Lum. v. G. N. Ry., 33 I. C. C. 541, 552.

§50. Return on Investment.

(a) Granting that those who assume great risks are entitled to commensurate rewards if their ventures prove successful, one can not ignore the fact that where a risk assumed by carriers has been richly compensated in the past, when the original investment has been returned several times, and the property greatly improved out of earnings, this element of risk should not be considered for the future. Lum. v. G. N. Ry., 33 I. C. C. 541, 556.

§51. Revenue of Road.

See Accounting, §5 (j); Advanced Rates, §7 (7); Reasonableness of Rates, §11, §28 (hi), §30.

(a) It may be that under prevailing local rates and the expenses incident to short-haul business freight brings in but small revenue. Mayor and Council of Douglas v. A. B. & A. R. R. Co., 28 I. C. C. 445, 453.

(b) Rates all-rail and water-and-rail from New York to south Atlantic ports result in some net revenue to the carriers and do not result in an increased burden upon traffic to and from intermediate points. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 177.

(c) The average ratio of operating expenses to operating revenue on the Atlantic Coast Line, Seaboard Air Line and Southern Railway for the year ending June 30, 1912, was 67.51 per cent. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 175, 176.

(d) Earnings of rail carriers are less on break-bulk grain than upon grain carried across the lake by the car ferries. Break-Bulk Rates on Grain, 30 I. C. C. 357, 358.

(e) The construction of a railroad has caused the development of the country through which it runs, and the interest of that territory requires that the road be operated, receiving sufficient returns to enable it to meet fully its obligations to the people whom it serves. Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491.

(f) Property investment accounts not a sufficient basis for determining adequacy of revenues. Five Per Cent Case, 31 I. C. C. 351, 361.

(g) Net operating and net corporate income two different measures of return on property investment. Five Per Cent Case, 31 I. C. C. 351, 362.

(h) Impropriety of accepting net corporate income as a measure of adequacy of rates. Net operating used. Five Per Cent Case, 31 I. C. C. 351, 363.

(i) Though the net operating revenue per mile of road of all carriers in a given state is notably greater than the revenues of the same or other carriers in neighboring states, it does not necessarily follow that the rates applicable to

transportation of goods from that state to another are unreasonable. While topography and productivity of a region are factors to be considered in determining freight rates in that region the lawfulness of interstate rates cannot be wholly gauged by the transportation returns arbitrarily imputed to the state in which the traffic originates. Railroad Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 651.

(j) A railroad furnishing part of refrigeration service, the ice haulage, and still turning over entire refrigeration revenue to refrigerator company with which it is not associated in interest would seem to indicate that it is not properly conserving its revenues. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 21.

(k) Carrier furnishing part of service and still turning over entire revenue to refrigerator company would seem to indicate that it is not properly conserving its revenues. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 21.

(l) Commission cannot view with favor any attempt to obtain an increase in net revenue through unduly restricted expenditures upon maintenance. Five Per Cent Case, 32 I. C. C. 325, 328.

(m) Defendant's net revenue per car for the haul from Wilson to Kerper, Ohio, a distance of 4.4 miles was about 72 cents. Proportional Commodity Rates between Kerper and Wilson, Ohio, Unrep. Op. A-893.

§52. Risk of Loss or Damage.

See Classification, §3 (c), §5 (k).

(a) Slight risk of loss or damage to salt and entitled to low rates. Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 43.

(b) There are perhaps but few articles of freight more subject to injury and unsatisfactory to handle than automobiles uncrated. Keats Auto Co. v. O.-W. R. R. & N. Co., 28 I. C. C. 412, 413.

(c) A comparatively small injury to an average automobile will generally result in damages equal to or in excess of the revenue received for its transportation. Keats Auto Co. v. O.-W. R. R. & N. Co., 28 I. C. C. 412, 413.

(d) Carload shipments are sealed and transported intact to destination, and this method results in the minimum risk of pilferage or damage as compared with the risk to which less-than-carload shipments are exposed. Keats Auto Co. v. O.-W. R. R. & N. Co., 28 I. C. C. 413.

(e) Generally agreed that nesting of culverts was frequently injurious, and that nested culverts of the larger sizes are much more difficult to handle than the individual culverts, loading and unloading being done by hand. Klauer Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 508, 509.

(f) There is a difference between full and empty beer packages in liability to damage and in the kind of protection necessary en route. Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 688, 691.

(g) Contention that rough stone should have lower rate than dressed stone because less liable to damage not sustained. Complaint dismissed. Flynn v. C. I. & L. Ry. Co., Unrep. Op. A-257.

(h) Sulphuric acid is considered a hazardous commodity on account of its charring and corrosive qualities and its liability to injure other freight in case of wrecks or of leakage in transit. Goldfield Consolidated Mines Co. v. S. P. Co., Unrep. Op. A-266.

(i) Risk of damage is greater when stove reservoirs are shipped in bundles than when they are shipped in boxes or crates. Lowenberg & Going Co. v. O.-W. R. R. & N. Co., Unrep. Op. A-361.

(j) Loss and damage is an unknown quantity in the transportation of pig iron the commodity being practically indestructible and, with any kind of intelligent handling, not susceptible to loss even when transported via rail-and-water, with the usual transfer at the dock incident thereto. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 603.

(k) Innumerable classifications and tariffs throughout the country contain packing and shipping requirements which can have no other justification than the right of the carrier to require the use of substantial and suitable containers and the elimination of hazard. Dunnage Allowances, 30 I. C. C. 538, 542.

(l) Risk is one of the elements entering into the present day rate fabric. Dunnage Allowances, 30 I. C. C. 538, 542.

(m) News print paper is a desirable article for transportation, loss and damage claims being negligible. Lake Superior Paper Co., Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 408.

(n) Apples and pears of other districts shipped at comparatively nominal risk as compared with California varieties. Pacific Fruit Exchange v. S. P. Co., 31 I. C. C. 159, 164.

(o) Aggregate of claims paid for loss and damage to beer shipments said to exceed claims on fifth-class-freight generally. Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545.

(p) Some grades of sweepings have more or less oil in them; are considered extra hazardous by insurance companies; and mills are required to ship them out in small quantities. Barnhardt Mfg. Co. v. S. Ry. Co. Unrep. Op. A-698.

(q) Scrap iron is a low-grade commodity and cannot be damaged in transit. Lebow v. A. T. & S. F. Ry. Co. Unrep. Op. A-704.

(r) Only the chasses of freight automobiles are shipped, and are not as likely to sustain damage in transit as highly finished passenger automobiles. Leavitt & Co. v. L. S. & M. S. Ry. Co. Unrep. Op. A-708.

(s) Potatoes shipped out of Minnesota, Wisconsin and Michigan during the month of September are immature and more perishable than those shipped during the winter months, and cannot be loaded as heavily. Miller & Co. v. C. & N. W. Ry. Co. Unrep. Op. A-746.

(t) Loss of bakery goods in transit rare, and shippers' claims are few, so that carriers' risk is slight. Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188, 190.

(u) When movement of liquid tanning extract is in tank cars, claims for loss and damage are few. Tanners' Supply Co. v. L. & N. R. R. Co., 32 I. C. C. 394, 402.

(v) Loss and damage claims on flour are somewhat greater than on wheat. Kansas-California Flour Rates, 32 I. C. C. 602, 604.

(w) That production and volume of movement of motorcycles has greatly increased and risk incident to their transportation reduced, alone does not afford a sufficient basis for further reduction. Myers v. C. B. & Q. R. R. Co., Unrep. Op. A-818.

(x) Loss and damage claims on gas cooking stoves are less in number than on wood and coal stoves or combination stoves though average value of former is somewhat greater. Boardman Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-835.

(y) Obviously there can be no propriety in attaching to one commodity unreasonable rates for the purpose of compensating a carrier for a risk attaching to it in the transportation of another commodity. The Cummins Amendment, 33 I. C. C., 682, 689.

§53. Size of Community.

(a) The fact that two communities may be one, from a commercial point of view does not necessarily make them one for transportation and rate making purposes. The Illinois Coal Cases, 32 I. C. C. 659, 680.

§54. Size of Load.

See Evidence, §53.

(a) Commission has repeatedly and without exception refused to permit the establishment of rates available only for the shipment of a trainload. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

§55. Standard of Lines.

See Reasonableness of Rates, §32.

(a) Rates are not to be fixed without reference to all lines operating in the territory. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 485.

(b) It is stated that the K. & T. Ry. traverses a mountainous country; is characterized by heavy grades, sharp curves, numerous trestles, a tunnel, a concrete bridge; its road is laid with heavy rails and is rock-ballasted; that it has never paid a dividend on its capital stock. Watson v. K. & T. Ry. Unrep Op. A-689.

§56. Standard of Rate.

See Advanced Rates, §15; Reasonableness of Rates, §2 (b).

(a) In removing an unlawful discrimination arising from the relation of in-

trastate to interstate rates, the Commission is not bound to reduce the latter below what it finds to be a proper standard, fair to carrier and public. Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 543.

(b) Rates fixed by the carrier from no other motive than to obtain a fair compensation for the service rendered are entitled to greater weight than rates which the carrier admits were fixed by it from other motives. Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 706.

(c) Where a number of carriers participate in traffic at the same rate but with varying costs of transportation, the policy of the Commission is not to take either the lowest or the highest cost as the standard. Lum. v. G. N. Ry., 33 I. C. C. 541, 555.

§57½. Terminal Cost.

(a) Terminal cost is practically common to the movement from a point of origin and from an intermediate point and should not be considered when differential cost is calculated. Coal Rates from Virginia Mines, 30 I. C. C. 635, 648.

§58. Ton-mile Revenue.

See Blanket Rates, §8 (n), §15½ (a), §17 (a); Discrimination, §11½ (a); Evidence, §13 (1), (dd), (ff), §20; Proportional Rates, IV (d); Reasonableness of Rates, §28 (bb), §36.

(a) Rate per ton per mile should decrease as haul increases. Gottron Bros. v. G. & W. R. R. Co., 28 I. C. C., 38, 45.

(bc) Fundamental maxim that rate per ton-mile shall decrease as distance increases, but to disregard rule is not of necessity a discrimination. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232.

(d) While a factor in rate making, per ton-mile results are not necessarily controlling. Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287.

(e) Ton per mile rates helpful in determining the reasonableness of rates, but its value is considerably minimized in a group adjustment. Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292, 295.

(f) An accurate presentation of per ton-mile yield must include a statement which will show the actual hauls and the average length of the hauls. Lumber Rates, Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 475.

(g) Rates on scrap iron seem generally to be stated in cents per 100 lbs. If carrier elects to establish an equivalent rate in cents per gross ton, it may do so. Scrap-Iron Rates Between Chicago and Milwaukee, 28 I. C. C. 525, 526.

(h) Ton-mile statistics, reflecting as they do neither car loading, train tonnage, nor car or train mileage, are far from being infallible guides in fixing freight rates. A high average ton-mile revenue may be due to short hauls, a preponderance of which occasions the traffic manager much uneasiness, while it has been repeatedly shown that traffic low in ton-mile earnings may, because of its farther carriage and greater density, be the most remunerative. Per-car earnings, with distance considered, are much more reliable. Where the commodity moves in trainloads the earnings per train mile furnish the best criterion, not only the car loading, but also such physical conditions as grades, etc., being here reflected. Comparison of any kind, however, to be effective must be analogous, or nearly so; that is, the rate charged or gross earnings derived on any basis for the transportation of a given commodity between two points furnishes a guide in arriving at the rate to be charged the same or nearly the same commodity between two other points similarly circumstanced. Traffic Bureau of Nashville, Tenn., v. L. & N. Ry. Co., 28 I. C. C. 533, 535.

(i) A high average ton-mile revenue may be due to short hauls. It has been repeatedly shown that traffic low in ton-mile earnings may, because of its farther carriage and greater density, be the most remunerative. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 535.

(j) Ton-mile statistics, reflecting as they do neither car loading, train tonnage, nor car or train mileage, are far from being infallible guides in fixing freight rates. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 535.

(k) The great disparity in the ton-mile earnings up to Thebes under the

proportional rate from Morehouse as compared with the proportional rate from Cape Girardeau, and between such proportional rates and the rates from Thebes to Evansville, does not appear to be justified. Reduction ordered. Von Vehren Mfg. Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-173.

(l) Evidence offered to support the charge of unreasonableness of rates on lumber from Amelia, Va., to Millington, Md., was a statement of the earnings per ton per mile. While the earnings are slightly over one cent per ton per mile, an examination of the tariffs on lumber from the same section discloses that the rate is not relatively higher than from similar points of origin to the same destination. Homer Lumber Co. v. S. Ry. Co., Unrep. Op. A-204.

(m) Ton-per-mile revenue should decrease as haul increases. Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 13; Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 377; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502; Interior Iowa Cities Case, 29 I. C. C. 536, 537; Colorado Mfrs. Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 544, 545.

(n) Upon a short haul the per-ton-mile test has, as a rule, very little evidentiary value. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 78.

(o) Ordinarily rates for longer distances yield a lower per ton-mile revenue. Brownsville (Tex.) Class and Commodity Rates, 30 I. C. C. 479, 485.

(p) The rule that revenue per-ton-per mile should decrease as the distance increases is well recognized, but there is no measure or standard by which the Commission can find that ton-per-mile units offered in a certain case vary only because of distance, and as to distance vary properly. Malt Rates to Texas Points, 30 I. C. C. 385, 386.

(q) The theory that the rate per ton-mile should decrease as the distance increases is subject to qualification that the rate for the longer distance must be compensatory. National Petroleum Assn. v. A. T. & S. F. Ry. Co., Unrep. Op. A401.

(r) Where the distance is greater the ton-mile rate should be lower. Rates on Beer and Other Malt Products, 31 I. C. C., 544, 546.

(s) It does not follow merely because rates per ton-mile are low by comparison that traffic is less remunerative than other traffic which may show higher ton-mile earnings. The Five Per Cent Case, 31 I. C. C. 351, 430. (Dissenting Opinion.)

(t) The rate per ton-mile should be less for the longer haul. Adleta Paper Co. v. C. & N. W. Ry. Co., 31 I. C. C. 347, 348.

(u) There are many factors, other than rate reductions, that affect per-ton-mile earnings. Without any reduction whatever in the charge for service a reduction in per-ton-mile revenue may be brought about by a relative increase in the length of haul or in the volume of traffic taking low rates. A very marked reduction in revenue per unit of service results also from the absorptions occasioned by payments for switching, lighterage, elevation, etc. The Five Per Cent Case, 31 I. C. C. 351, 373.

(v) On shipments from a more remote point of origin the rate per ton-mile may properly be less than on shipments from a nearer point. Packing-house Products from Iowa Points, 31 I. C. C. 308, 310.

(w) The per cent added to the rate should be slightly less than the per cent added to the distance. Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 291, 292.

(x) The rate per ton-mile should be slightly less for the long distance. Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 291, 292.

(y) Disparity of ton-mile revenue cannot of itself justify condemnation of a rate structure of long standing. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 627.

(z) It is a well recognized principle that freight rates should yield a lower revenue per ton-mile as distance increases. However, various circumstances may modify the application of this principle. The amount of traffic carried; character of country traversed; whether there is a main line or a branch line service, and other conditions, are to be considered. It does not follow, merely because the rate to one point yields

slightly more than that to another point from the same points of origin, that the former is unduly prejudicial within the meaning of the statute. Beatrice Commercial Club v. C. B. & Q. R. R. Co., 31 I. C. C. 173, 177.

(aa) While a comparison based only on ton-mile revenues may often be misleading, the Commission has frequently recognized its value. When a comparison is made between rates on lines which operate under like physical conditions, and when the lengths of the hauls are substantially equal, the fact that the ton-mile revenue of one carrier for the transportation of a commodity greatly exceeds the ton-mile revenue received by the other carriers for transportation of the same commodity is indicative of the unreasonableness of the higher rate. Weatherford Cham. of Com. v. M. K. & T. Ry. Co., 31 I. C. C. 665, 668.

(bb) Upon a short haul the per-ton-mile test has, as a rule, very little evidentiary value. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 78.

(cc) Freight paying less than 3 mills per ton-mile is looked upon by carriers as perhaps paying less than the actual out-of-pocket costs. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 176.

(dd) Decrease in per-ton mile rates with increased distance should vary properly. Malt Rates to Texas Points, 30 I. C. C. 385, 386.

(ee) Ordinarily rates for longer distances yield a lower per-ton-mile revenue. Brownsville, Tex., Class and Commodity Rates, 30 I. C. C. 479, 485.

(ff) The rule is well recognized that ordinarily the per-ton yield should decrease with distance; but this rule should find full application only where the conditions of haul are substantially similar and where a prairie haul is compared with a mountain haul, the general rule may be qualified. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 556.

(gg) Freight rates should yield a lower revenue per ton-mile as distance increases. Beatrice Commercial Club v. C. B. & Q. R. R. Co., 31 I. C. C. 173, 177.

(hh) Without any reduction in the charge for the service a reduction in the revenue per-ton-mile will be brought by a relative increase in the length of haul or in volume of traffic taking low rates. Five Per Cent Case, 31 I. C. C. 351, 373.

(ii) Yield per ton for carrying bituminous coal is lower on most of coal-carrying roads than their average ton per mile revenue. Five Per Cent Case, 31 I. C. C. 351, 374, 392.

(jj) Revenue of car-mile earnings low when value of commodity is considered. The Five Pet cent Case, 31 I. C. C. 351, 419.

(kk) It is seldom that ton-mile earnings alone are a decisive test of the unreasonableness of a rate. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 578.

(ll) Ton per mile. Revenue: One of factors to be considered in establishing a new rate or in condemning an existing rate as unreasonable. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 598.

(mm) Ton per mile. Revenue: Disparity of can not of itself justify condemnation of a rate structure of long standing. Stuarts Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 627.

(nn) Where operating under like conditions, the fact that ton-mile revenue of one carrier greatly exceeds that received by other carriers is indicative of the unreasonableness of the higher rate. Weatherford Chamber of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 668.

(oo) Rate per ton-mile should be less for longer haul. Adleta Paper Co. v. C. & N. W. Ry. Co., 31, 347, 348; Rates on Beer and Other Malt Products, 31, 544, 546; Colonial Salt Co. v. C. B. & Q. R. R. Co., 559, 568; 31, R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 649.

(pp) Rates yield per ton-mile 3.91c from Caney and 3.61c from Bolton, Kans., to Tulsa, Okla., which is a high return for a commodity like scrap iron. Reparation awarded and reduction ordered. Lebow v. A. T. & S. F. Ry. Co. Unrep. Op. A-704.

(qq) That less distant points should enjoy rates which yield lower per ton-mile revenues than more distant points is contrary to the usual and recognized rule. Coffeyville Merc. Co. v. M. K. & T. Ry., 33 I. C. C. 122, 124.

(rr) Ton-mile earnings should decrease as the distance increases. Nor-

thern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 369.

(ss) The ton-mile test as has been often pointed out, is by no means infallible. Lumber Rates from Helena, Ark., and other Points, 33 I. C. C. 297, 300.

(tt) Other things being equal, the longer the distance, the less the revenue per ton mile. Northbound Rates on Hardwood, 32 I. C. C. 521, 529.

(uu) Comparisons of ton-mile yields on traffic figured on both present and proposed rates with the ton-mile yields of rates theretofore fixed by the Commission, are far from controlling, but may tend to show that proposed rates are unreasonably high. Northbound Rates on Hardwood, 32 I. C. C. 521, 529.

(vv) The rule is well recognized that ordinarily the per-ton yield should decrease with distance; but this rule should find full application only where the conditions of haul are substantially similar and where a prairie haul is compared with a mountain haul, the general rule may be qualified. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 556.

(ww) Where a prairie haul is compared with a mountain haul the general rule that yield should decrease with distance may well be qualified. Class and Commodity Rates to Salt Lake City, 32 I. C. C. 551, 556.

(xx) Comparison of ton-mile earnings of little value. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 593.

(yy) Earnings derived in past from local traffic on which the ton-mile average is always high, hardly afford a fair comparison with reshipping rates. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 593.

(zz) The rule that ordinarily the per ton-mile yield should decrease with distance has full application only where the conditions of haul are substantially similar. Montrose & Delta Counties Frt. Rate Asso. v. D. & R. G. R. R., 34 I. C. C. 400, 404.

§59. Two-Line Haul.

See Accounting, §6, (i); Advanced Rates, §15½; Discrimination, §11¼; Divisions, §7 (b); Evidence, §18 (k), (dd); Switch Tracks and Switching, §4 (ll); Tap Lines, §7 (q); Through Routes and Joint Rates, §11 (2), (c),

(a) No fixed rule of transportation requiring higher rate for two-line than for one-line haul of same distance. Mississippi River Case, 28 I. C. C. 47, 59.

(b) Through business is less than that incident upon two intermediate hauls. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232.

(c) Additional allowance for a two-line haul refused. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 264.

(d) Rate from New York to Memphis not found unreasonable or unduly prejudicial as compared with rate from New York to St. Louis where carriers having direct one-line haul to St. Louis do not serve Memphis, and where carriers serving Memphis reach St. Louis only by two or three line hauls. Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547.

(e) Arbitraries over the one-line haul prescribed in case of a two-line haul. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 563, 567.

(f) The Commission has, in several instances, recognized the propriety of naming a somewhat higher rate where the movement is over two lines than when it is over a single line. Iowa State Board Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 563, 567.

(g) The expense of handling traffic is greater over a two-line haul than a one-line haul, and the charge paid by the public should be greater. Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 631.

(h) Although the Commission has recognized the justice of establishing a higher rate for a short two-line haul than for a one-line haul of equal length, it has not been disposed to consider the necessity for such higher rate as controlling in the matter of long-distance hauls. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576.

(i) Where distances of over 500 miles are involved, the fact that the service

is by two lines is largely negligible. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 577.

(j) Where distances of over 500 miles are involved, fact of two-line movement is largely negligible. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678.

(k) Where physical connection between connecting carriers is simple, involving no expensive terminal service, the additional cost due to the switching movement is very small and may not properly be made the basis of an additional charge for a two-line haul of substantial length. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678.

(l) Two-line haul usually justifies a higher total charge than a one-line haul. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678.

(m) Reparation awarded on the basis of a rate for a two-line intrastate rate, which was admitted as a reasonable rate. Arkansas Short Leaf Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A435.

(n) Where the distance is great and the switching connection simple, the factor of a two-line haul is largely negligible in determining rates. Hughes Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10, 13.

(o) Because nothing is added to the one-line distance rate from a certain city on account of the fact that the haul is a two-line or three-line haul, it does not follow that nothing ought to be added to the one-line distance rate on account of a two-line haul from another city to the same destination, over a shorter distance. Wichita Business Asso. v. C. & O. Ry. Co., 31 I. C. C. 323, 326.

(p) The increased service incident to a two-line haul may justify a rate somewhat higher than would be permitted were the traffic moved by a single line. Weatherford Chamber of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 666.

(q) Although the Commission has recognized the justice of establishing a higher rate for a short two-line haul than for a one-line haul of equal length, it has not been disposed to consider the necessity for such higher rate as controlling in matter of long-distance hauls. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576.

(r) A rate from a milling point applied on wheat milled in transit which exceeds rate from points of origin is not unreasonable where there was an out-of-line haul involving additional services to or through the milling point. Rea-Patterson Milling Co. v. M. P. Ry. Co., Unrep. Op. A-608.

(s) Owing to two-line haul, defendants may properly increase joint rates on cement plaster and products to the extent of 2c per 100 lbs. for distances not in excess of 500 miles. Eldorado, Okla., to Kansas points. United States Gypsum Co. v. C. R. I. & P. Ry. Co. Unrep. Op. A-760.

(t) Rate of 14 cents on unglazed fire clay roofing tile from St. Louis, Mo., to French Lick, Ind., found unreasonable to the extent that it exceeded the 12c rate via the one-line route of the Southern Ry. Mound City Roofing Tile Co. v. B. & O. S. W. R. R. Co. Unrep. Op. A-762.

(u) The Commission on various occasions has recognized that it is just and reasonable for two or more independent lines, not part of the same system, but making up a through route, to charge a somewhat higher rate for a two-line haul than would be deemed reasonable for a single-line haul of equal distance. Meridian Fertilizer Factory v. A. & S. Ry. Co., 33 I. C. C. 160, 163.

(v) Contention that rates for joint hauls from points in Wisconsin to Shemerville, Ill., via the C. M. & St. P. Ry., should not exceed rates charges for one-line hauls to Chicago, not sustained. Schultz & Cowen Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-823.

§61. Value of Commodity.

See Advanced Rates, §18 (4), §18 (5); Classification, §3 (c), §11, §17; Water Carriers, §7 (g).

(a) Under the law it is the duty of shippers of property of more than ordinary value to bill same at its true value in order that legal rate may be applied. In re Express Rates, 28 I. C. C. 132, 138.

(b) Amount of any c. o. d. bill for collection from a consignee shall be considered as declaration of value of shipment, unless greater value is de-

clared. In re Express Rates, 28 I. C. C. 132, 138.

(c) Freight rate is not so significant on high-grade as with coarser commodities. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 233.

(d) Brick is a desirable traffic and should be accorded a low rate as compared with most other traffic. Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292, 297.

(e) Where shipper refused to state, as required by tariff, the market value of shipment of stocks and bonds, the carrier was under no obligation to transport such securities, and it was its duty to refuse the shipment. Acme Portland Cement Co. v. Am. Exp. Co., 28 I. C. C. 316.

(f) Carrier not entitled to assess charges on shipment of stocks and bonds, accepted in violation of its tariff, on a par value far in excess of actual value of securities. Acme Portland Cement Co. v. Am. Exp. Co., 28 I. C. C. 316.

(g) Rates on liquors formerly maintained dependent upon value, but withdrawn at request of shippers who objected to showing the invoice value of their shipments upon the bills of lading. Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 378.

(h) Market value of California champagne is about one-third that of the imported champagne. Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 378.

(i) Scrap iron is a very low-grade commodity, which loads heavily, and which should therefore move under a low rate. Scrap-Iron Rates Between Chicago, Ill., and Milwaukee, Wis., 28 I. C. C. 525.

(j) That the full use of transportation equipment furnished by carriers shall be made by shippers of heavy and low-grade traffic, such as crushed stone, is not an unreasonable requirement. Balfour Quarry Co. v. S. Ry. Co., Unrep. Op. A-138.

(k) There is no objection to a reasonable differential between the rates on material and the manufactured products thereof. Plain sheet steel and corrugated sheet steel bear to a degree the relation of raw material and products. Rulofson & Co. v. P. Co., Unrep. Op. A-153.

(l) Rates on rugs from Newark, N. J., to Sheridan, Wyo., dependent upon value, not found unreasonable. Stevens, Fryberger & Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-237.

(m) Rates on sand from points in Illinois and Minnesota reduced by carriers, but lines entering California oppose the establishment of such rates on the ground that they do not consider them compensatory. Rates not having been found unreasonable, complaint dismissed. Puget Sound Iron & Steel Works v. C. R. I. & P. Ry. Co., Unrep. Op. A-249.

(n) Contention that rough stone should have lower rate than dressed stone because dressed stone is more valuable, not sustained. Flynn v. C. I. & L. Ry. Co., Unrep. Op. A-257.

(o) Values are not always controlling as to the rates on commodities, but where other conditions are not unequal a substantial difference in values may properly be held to justify a difference in rates. Scully Syrup Co. v. P. R. R. Co., Unrep. Op. A-360.

(p) Salt is very sensitive to rate changes and a very slight difference in the rate may be sufficient to absolutely control the point of purchase. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 566.

(q) Leather used in the manufacture of harness and shoe sole leather are of practically same value. Chamber of Commerce of Macon v. C. N. O. & T. P. Ry. Co., 30 I. C. C. 477, 478.

(r) Phosphate rock is valued at from $3.56 to $4 per ton at the mine. Meridian Fertilizer Factory v. L. & N. R. R. Co., 30 I. C. C. 494, 495.

(s) When the carriers have established a practice of making freight rates with relation to the selling price of the commodity, it is but fair to assume that rates charged during periods of unusual prosperity were sufficiently above normal to make up any decrease in profits sustained during leaner years. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 600, 601.

(t) Value of blackstrap molasses is less than that of the lowest grade of

table molasses, and not more than 25 per cent of the value of the highest table grade. Molasses Rates to Knoxville, Tenn., 30 I. C. C. 613.

(u) Walnut, cherry, cedar, cigar box material, mahogany and decorative lumber included in "woods of value." Card Lumber Co. v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-591.

(v) Pyrites cinder is a low-grade commodity, worth only about 50 cents a ton. Alabama Chemical Co. v. M. & O. R. R. Co., Unrep. Op. A-602.

(w) Degree of deterioration of a commodity in transit cannot be measured solely by a difference in selling price. Price is a market phenomenon and the resultant of competitive forces represented by buyers and sellers. R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 33.

(x) Since it appears that the addition of carving, lettering or sculpturing to granite results in a considerable increase in the value of the commodity and makes it more susceptible to damage while in transit, granite so carved, lettered or sculptured should properly take a slightly higher rating and rate than those applicable to building and monumental granite. Nebraska State Ry. Com. v. C. V. Ry. Co., 32 I. C. C. 41, 47.

(y) It is said that interior house trimmings average higher in value than furniture, in carloads, including higher grades. Union Trim & Lumber Co. v. G. R. & I. Ry. Co. Unrep. Op. A-716.

(z) Rates on scrap iron are equal or greater from Kansas City to Chicago than on other commodities of considerably greater value. Not found unreasonable. Sonken-Galamba Iron & Metal Co. v. A. T. & S. F. Ry. Co. Unrep. Op. A-718.

(aa) Not much difference in value between cypress and yellow pine. Florida Cypress Co. v. L. & N. R. R. Co. Unrep. Op. A-725.

(bb) Saw logs are a low-grade commodity, the transportation of which for long distances may not always be logical or practicable, and in so far as concerns the administration of the law the carrier has discharged its duty in this respect when it has accorded reasonable and nondiscriminatory rates. Boise Lumber Co. v. P. & I. N. Ry., 33 I. C. C. 109, 115.

(cc) A given difference of quality in articles of same class and general description does not imply a fixed price relation in different markets. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 33.

(dd) Where a commodity rate is made for a manufactured product capable of classification, a certain equilibrium between competing points of manufacture should be preserved. Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

(ee) Scrap iron is a very low-grade commodity and should take a low rate. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 259.

(ff) Operation of principle that articles of higher value even when derived from the same raw material as those of lower value should carry a higher rate, would seem prima facie to lead to the conclusion that veneer and built-up wood should take a somewhat higher rate than lumber. Underwood Veneer Co., v. A. A. R. R. Co., 32 I. C. C. 265, 267.

(gg) Cottonseed foots is about one-fifth the value of cottonseed oil and usually takes lower rates. Swift & Co. v. S. A. L. Ry., Unrep. Op. A-787.

(hh) Presence of inelible grease in tallow materially reduces value of the compound. Reparation awarded on inelible animal grease from Los Angles, Cal., to Kansas City, Kans. Sulzberger & Sons Co. v. S. P. Co., Unrep. Op. A-790.

(ii) Automobiles and aeroplanes excepted from operation of free return rule on account of their great value. Mogul Motor Truck Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-797.

(jj) Average value of gas stoves is somewhat greater than average value of wood or coal burning stoves or combination stoves. Boardman Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-835.

(kk) Wool waste is a low-grade commodity. Peck & Co. v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A-850.

(ll) While value is an element to be considered in the fixing of a rate, consideration of the profit accruing to the shipper on the traffic hauled is not a recognized basis, and cannot be, since such consideration would lead to the charging of a different rate to different

individuals for the identical service where it appeared that one shipper was not able to make as much profit out of his shipment as some other shipper more fortunately circumstanced. Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C., 645, 656.

§62. Value of Service.

See Advanced Rates, §6 (6); Reasonableness of Rates, §39.

(a) Railroads move scrap iron at their convenience, it being considered low-grade or dead freight. Scrap-Iron Rates Between Duluth and Chicago, 28 I. C. C., 467, 468.

(b) The rate attacked is not the rate applicable to the service performed, but is simply a factor that arbitrarily enters into the price of the commodity when consumed at destination. National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 674.

(c) A slight difference in the cost or selling price of grain decides the markets to which it will go, and very slight differences in rates decide the routes over which it will move. Export Rates on Grain and Grain Products, 31 I. C. C. 617, 618.

(d) The Commission will not require carriers to maintain low rates on a commodity because of business depression. Northbound Rates on Hardwood, 32 I. C. C. 521, 528.

(e) A dominant factor in rate making. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 466.

§63. Volume of Traffic.

See Evidence, §15½ (f), §18 (aa); Accounting, §6 (ef); Advanced Rates, §5 (1½), §18 (3); Branch Lines, §1 (g); Classification, §3 (c), §4, §5; Refrigeration, §2 (c).

(a) The Commission has approved carload rates which are less per 100 lbs. than the less-than-carload rate on the same commodity, but it has never extended the principle so as to justify trainload or wholesale rates of any character. Woodward-Bennett Co. v. S. P. L. A. & S. L. Ry. Co., 29 I. C. C. 664, 665.

(b) Salt loads heavy, and entitled to low rates. Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 43.

(c) Tonnage over direct routes to all Mississippi River crossings increasing. Mississippi River Case, 28 I. C. C. 47, 55.

(d) That shipper presented cotton in such form that carload lading could be doubled and cost of transportation correspondingly diminished, does not, as a matter of right, entitle him to lower rate. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 208.

(e) Shipper tendering carload of freight is not of necessity entitled to more favorable rate than one who tenders 100 lbs. of same commodity. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 209.

(f) That traffic is small has been recognized by Commission as reason for maintaining higher rates than where movement is greater. German Kali Works, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 224.

(g) The fact that there is not and has not been for a considerable period any movement is not sufficient justification for the cancelation of the commodity rate, leaving higher rate in effect. Sandstone, Minn.-Missouri River Building Stone Rates, 28 I. C. C. 269, 271.

(h) Ordinarily champagne is shipped in less than carloads. There is, however, considerable movement in carloads in bond. Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 377.

(i) Volume of traffic greater in one direction than in the other justification for difference in rates. Hull Vehicle Co. v. S. Ry. Co., 28 I. C. C. 619, 620.

(j) Advantage of heavier loading in tank cars northbound than in box cars southbound offset by empty back haul of tank cars, while box cars may be reloaded. Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707, 708.

(k) Record indicates that the movement of wooden rods to El Paso territory does not exceed four to eight cars per annum. No real demand for reduction. Nomsen Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. A-136.

(l) A great volume of traffic in one direction may well excuse lower rate in that direction than are charged upon sporadic shipments in the opposite di-

rection. Board of R. R. Com'rs of Mont. v. N. P. Ry. Co. Unrep. Op. A-157.

(m) Rates in Central Freight Association territory, in which the density of traffic is greater, are ordinarily on a lower basis than in western territory. Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-233.

(n) Line operated through mountainous and sparsely populated territory is clearly at a disadvantage. Rates to North Carolina Points, 29 I. C. C. 550, 556, 557.

(o) That traffic is offered in tranload lots cannot be made basis of rates different from those applied to shipments in single carloads. Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co., 29 I. C. C. 664, 665.

(p) Wholesale rates never approved by Commission. Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co., 29 I. C. C. 664, 665, 666.

(q) Tonnage considered in determining propriety of rates. Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 8; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 437; Springfield Traffic Bureau v. St. L. & S. F. R. R. Co., 29 I. C. C. 600, 603; Hughes Creek Coal Co. v. K. & M. Ry., 29 I. C. C. 671, 674.

(r) Higher rates west of the Mississippi River than east of that river are due to greater density of traffic and greater earnings east of said river. National Petroleum Assn. v. A. T. & S. F. Ry. Co., Unrep. Op. A410.

(s) Rates are usually to a certain extent governed by volume of business. Miller Brothers v. M. P. Ry. Co., Unrep. Op. A413.

(t) It is improper to assume that if rates which have been changed had been held at the level established the result would have been a decreased movement of traffic, where they were not left in effect a sufficient time to demonstrate their effect. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 567.

(u) The traffic density of the Atlantic Coast Line, the Seaboard Air Line or the Southern Railway cannot be fairly compared with the traffic density of the eastern trunk lines. Fourth Section Violations in the Southeast, 30 I. C. C. 153; 175.

(v) Malt loads more heavily than flour, and this is reflected in the minimum carload weights. It is less subject than flour to loss and damage in transit. Malt Rates to Texas Points, 30 I. C. C. 385, 387.

(w) The density of traffic of the lines which serve the Soo and extend through the southern peninsula of Michigan is much less than that of the lines which serve the eastern mills and of those which serve the Wisconsin mills. Lake Superior Paper Co., Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 411.

(x) News print paper is a desirable article for transportation; although minimum weight is 36,000 pounds, average load approximates 50,000 pounds per car; no particular equipment or special speed required; loss and damage claims negligible and daily movement is regular and uniform. Lake Superior Paper Co., Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 408.

(y) If shipments of produce were made in packages instead of bulk, car linings and bulkheads would not be necessary. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 440.

(z) Leather used in manufacture of harness loads as heavily as shoe sole leather. Chamber of Commerce of Macon v. C. N. O. & T. P. Ry. Co., 30 I. C. C. 477, 478.

(aa) Fresh meat loads lighter than packing-house products by 5,000 or 6,000 pounds to the car. Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 548.

(bb) It may fairly be questioned whether the same high-rate structure should prevail in a district thickly populated and in which traffic moves in large quantities as naturally prevails in territory which is more sparsely settled and where transportation costs are relatively higher. Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 30 I. C. C. 615, 618.

(cc) There are more bananas imported through New Orleans than through any other port in the United States. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 627.

(dd) Rates are usually lowest in sections where traffic is most dense. Min-

neapolis Civic & Commerce Asso. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 665.

(ee) Length of haul and volume of traffic are among the determining factors in arriving at cost. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(ff) There are commodities so low in value that it is unprofitable to ship them long distances under even reasonably low rates, and pyrites cinder seems to be such a commodity. Alabama Chemical Co. v. M. & O. R. R. Co., Unrep. Op. A-602.

(gg) Pulpwood loads as heavily as sawlogs. Curry & Whyte Co. v. G. N. Ry. Co., Unrep. Op. A-645.

(hh) The mere fact that the amount of the traffic in question is small surely should not preclude decision of the case presented and the establishment of a reasonable freight rate. Nebraska State Ry. Com. v. C. V. Ry. Co., 32 I. C. C. 41, 46.

(ii) That one commidity loads as heavy as another and can be moved at the same cost is not controlling. There may be other material considerations. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 267.

(jj) The Commission has declined in notable instances to allow economics of carriage to control in the matter of setting preferential rates. It has without exception refused not only to establish, but even to permit the establishment of rates available only for the shipment of a trainload. Though such shipment could be transported at a minimum of expense per unit of weight and carriers could well afford to make lower rates upon it, yet those rates would so discriminate in favor of the large shippers and tend to concentrate the business in their hands that proper considerations have compelled disapproval. Logically extended, these considerations would lead to condemnation of the carload rates, but there are two distinctions that have resulted in a different disposition. The first is that the Commission, upon its constitution, found carload rates already an integral part of the American rate structure; the second is that the shipment unit of these rates is of a size which a great part of the county's shippers is prepared to make, so that their discriminatory effect and tendency to concentrate business is comparatively slight. Consequently the Commission has in a multitude of cases permitted the establishment of such rates. American Round Bales Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

(kk) It cannot be said that one who invents a machine which results in giving a greater density to a commodity is ipso facto entitled to a lower freight rate on the commodity, especially when the granting of the advantage would tend to disrupt a long-established system of production. Am. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 468.

(ll) Ackworth's formula that "the heavier the traffic, the lower (profits remaining equal) must be the rate," as an abstract principle in transportation economics may be sound. But it by no means follows that because the tonnage of a particular commodity, like wheat, is doubled, or even tripled, a corresponding increase in profit accrues upon the handling of that particular article. Railroad Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 650.

(mm) It cannot be said that a transportation company is not a common carrier merely because a considerable portion of its business consists of freight carried for itself or for the industry with which it is associated. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 285.

(nn) It does not follow that because tonnage of a particular commodity like wheat is doubled or trebled, that a corresponding increase in profits accrues. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 650.

(oo) Kentucky & Tennessee Railway traverses a mountainous country and receives practically no freight for transportation in the reverse direction of its lumber traffic. Rates not found unreasonable. Watson v. K. & T. Ry. Unrep. Op. A-689.

(pp) Density of tonnage is a factor to be considered in questions affecting the adjustment of rates. Eastern Fruit Growers Asso. v. B. & O. R. R., 33 I. C. C. 343, 347.

(qq) The general proposition that the less important branches of railway traffic should be regarded as by-products of the more important is open to question. Lum. v. G. N. Ry., 33 I. C. C. 541, 546.

(rr) The average ice tonnage carried during the hot months is less than during fall and winter months. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 25.

(ss) Density of traffic factor in determining reasonableness of rates. Cement Rates from Points in Illinois, 32 I. C. C. 369, 372.

(tt) Buckwheat flour or corn flour to California terminals is less than two per cent of volume of traffic in wheat flour. Westbound Transcontinental Rates on Buckwheat and Corn Flour, Unrep. Op. A-841.

(uu) Contention that rate on yellow pine lumber from Hot Springs, Ark., to Bristow, Va., should be higher via southern lines than via the trunk lines, because of lesser density of traffic, held, to be fully offset by shorter mileage via southern lines. Valley Planing Mill Co. v. St. L. I. M. & S. Ry Co., Unrep. Op. A-906.

§64. Voluntary or Subsequent Reduction of Rate.

See Reasonableness of Rates, §32½; Reparation, §16.

(a) It can fairly be taken as conclusive that voluntary rates established by the carriers are as high as they should be. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 257.

(b) It is conceivable that carriers could not establish voluntarily the rates found reasonable by the Commission. In re Advances on Live Stock, 28 I. C. C. 332, 334.

(c) Rates established as result of action by state commission, not a voluntary rate. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 484.

(d) Rate war caused reduction between Kansas oil field and New Orleans, La., prior rate restored and held reasonable. National Petroleum Assn. v. A. T. & S. F. Ry. Co., Unrep. Op. A405.

(e) Rate of $1.05 on cresote from Bayway, N. J., to Los Angeles and San Francisco, Cal., via New Orleans, La., not found unreasonable as compared with combination rate of 85 cents via Chicago or subsequently established joint through rate via New Orleans. Bayway Chemical Co. v. C. R. R. Co. of N. J., Unrep. Op. A-810.

(f) Rates from Los Angles, Cal., to Connor Shale and Signa, Cal., on wrought iron pipe which originated at McKeesport, Pa., not found unreasonable. That reduced intrastate rates were subsequently established upon interstate traffic does not warrant a finding of unreasonableness. General Construction Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-812.

§64½. Wages.

(a) Wages of employes, element to be considered in determining cost of handling traffic. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 435.

§64¾. Wagon Roads.

(a) The maintenance of good wagon roads is of material interest to the railroads. Rates on Crushed Stone, 30, I. C. C. 22, 28.

(b) The average cost of construction of a mile of standard wagon road has been about $10,000. Rates on Crushed Stone, 30 I. C. C. 22, 27.

§64⅞. War in Europe.

(a) Commission must recognize the fact that war in Europe exists and the fact that by it the world's commerce has been thrown into confusion. Five Per Cent Case, 32 I. C. C. 325, 330.

§65. Weight of Shipment.

See Weights and Weighing.

(a) The heavy loading of a commodity results in saving of equipment in times of car shortage. Rates on Tomatoes from Jacksonville, 29 I. C. C. 523.

(b) Loading of blackstrap mo in tank cars is about 90,000 lbs. iana Sugar Planters' Ass'n v. R. Co., 31 I. C. C. 311, 317.

(c) Cars under load are an average to only 58 pacity. Five Per Cent C 351, 411.

(d) Tomatoes are in weight than ge freight, but differenc tial. Allen Bros. Co. R. Co. Unrep. Op.

(e) Weight of i mings much lower ing of furniture in ca

sions are not res judicata, and it is not precluded from again considering a matter once examined and decided if a new and different set of facts is brought to its attention. Questions of reasonableness and discrimination are always questions of fact, and each case must stand or fall on the record made in that case. Curry & Whyte Co. v. D. & I. R. Ry. Co., 30 I. C. C. 1, 3.

(b) A statement by the Commission that demurrage charges assessed are properly collectible upon a certain shipment, but that the Commission has no means of determining the reasonableness of such charges, and that if plaintiffs wish to pursue the matter further they will have to file a formal complaint, is not res adjudicata in a controversy relative to demurrage and storage charges imposed by the carrier upon a different shipment. Neustadt v. Lehigh Val. Ry. Co., 144 N. Y. Supp. 911, 915.

(c) A showing that the Commission in an earlier case compelled a carrier to establish rates for a comparatively shorter haul the same as rates in effect via a longer route is no reason for denying the justice of establishing equal rates when the distances are substantially equal. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576.

(d) The Commission is not bound by any rule of stare decisis and its conclusions are not res judicata. Curry & Whyte Co. v. D. & I. R. R. R. Co., 30 I. C. C. 1, 3.

(e) A reference by the Commission to its conclusions in other cases is entirely proper. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 424.

(f) Previous decisions have weight with the Commission, but no formal ruling can justify a refusal of reasonable rates. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

(g) No former ruling can justify a refusal of reasonable rates. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

(h) Subject matter of complaint was previously before Commission in Memphis Freight Bureau v. St. L. & S. F. R. R. Co., 24 I. C. C. 602, and no error is shown. Complaint dismissed. May Bros. v. St. L. & S. F. R. R. Co., Unrep. Op. A-909.

(i) Following Leavitt & Co. v. L. S. & M. S. Ry. Co., U. R. A-951, refusal to make allowance for dunnage used in shipments of automobiles from eastern points to Pacific coast points, not found unreasonable. Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-953.

EXAMINERS

See Accounting, §1 (i), (j); Interstate Commerce Commission, §4.

EXCESS FARES

See Passenger Fares and Facilities, §5½; Special Rates and Services, (g).

EXPEDITED SERVICE.

See Advanced Rates, §2½ (l); Crimes, §2½ (b); Discrimination, §3 (i), §4 (m); Special Rates and Services, (f), (h).

(a) Expedited movement of freight is a part of transportation service while a transit privilege is something offered to the shipper in addition to transportation service. The Five Per Cent Case, 31 I. C. C. 351, 408.

(b) The need for expeditious service distinguishes the transportation of livestock from that of other commodities for which a stoppage service is provided. Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 324.

(c) Expedited movement of freight is a part of transportation service, while transit privilege is something offered to shipper in addition to transportation service. Five Per Cent Case, 31 I. C. C. 351, 408.

(d) Expedited package freight and service in carload freight must have increased operating costs. Five Per Cent Case, 31 I. C. C. 351, 392.

(e) Two iron beams from Fort Wayne, Ind., to Marathon, Iowa, shipped in special car in order to move them expeditiously. Carload rate and minimum as applied not found unreasonable. American Steel Dredge Co. v. American Exp. Co., Unrep. Op. A-807.

EXPERIMENTAL RATES

See Reasonableness of Rates, §7½ (s).

(a) Rates established for experimental purposes at the solicitation of shippers, as for instance to enable shippers to engage in certain business, and not shown to be reasonable in themselves, cannot be set up as standards by which to test the reasonableness of a proposed rate. N. Y. Produce Exchange v. N. Y. C. & H. R. R. Co., 32 I. C. C. 212, 216.

(b) An assertion that rates were established as an experiment and proved to be a mistake comes too late, at the end of 14 years. Nebraska Bridge Supply & Lumber Co. v. N. C. & St. L. Ry., 35 I. C. C. 86, 89.

EXPERT EVIDENCE

See Evidence, §22½.

EXPLOSIVES.

See Classification, §14 (b); Demurrage, §2½; Reparation, §16 (41), (4k); Storage, §2 (c), (J).

(a) Request for notification to shippers of failure or refusal of consignees to accept or remove shipments of explosives should be placed on different colored label than that prescribed by Commission's regulation. Storage Charges in C. F. A. Territory, 28 I. C. C. 372, 375.

(b) The rules governing storage charges on explosives and other dangerous articles embrace most of the features of the code adopted and recommended by the American Railway Association for general use. Storage Charges in C. F. A. Territory, 28 I. C. C. 372, 373.

(c) A shipment of dynamite consigned from Kenville, N. J., to Montevideo, South America, was a foreign shipment subject exclusively to the Transportation of Explosives Act and regulations of the Interstate Commerce Commission issued thereunder. Actiesselskabet Ingrid v. Central R. Co. of N. J., 216 Fed. 72, 82.

(d) Paragraph 1805 of the Regulations for the Transportaton of Explosives and Other Dangerous Articles, prescribed by the Commission, provides that corrosive liquids, including strong mineral acids and other strongly corrosive liquids that are liable to cause fires when mixed with chemicals or with organic matter, or are liable, in case of leakage from their shipping containers, to damage other freight materially, should move under a white label. In accordance with this, sulphuric acid should move under a white label; and tariffs providing for charges in addition to demurrage charges for delay in unloading commodities moving under a white label properly apply to shipments of sulphuric acid. International Agr. Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 200.

(e) In an issue as to a rate of transportation, the question of degree of danger to other property in the handling, transportation, etc., of the commodity in question may be considered. But where the question is whether or not there exists necessity for special treatment of the commodity, so that danger may be avoided, the element of degree of danger does not enter into consideration. International Agr. Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 200.

(f) The complainant attacked the rating of double first class on high explosives, C. L., between points on the lines of defendants, alleging that this rating is unreasonable and unduly discriminatory. By exception to the Southern Class'n defendants provide for double first class on common black powder, L. C. L., first class on the same in carloads, minimum 10,000 pounds and double first on all other high explosives, any quantity. It is the last named rating in carloads that is under attack. In du Pont de Nemours Powder Co. v. C. R. R. of N. J., 25 I. C. C. 19, the Commission held that double first class on this commodity applied by the L. & N. R. R. from Knoxville, Tenn., to Copper Hill, Tenn., on interstate traffic, was unreasonable to the extent that the charge exceeded the first class rate. In both Official and Western Class'ns generally high explosives move at the first class rate. Since the establishment of the carriers' bureau for the safe transportation of explosives, the promulgation of the Commission's rules in connection therewith, etc., there has been a marked decrease in the number of accidents in the transportation of explosives. HELD, that the rates applied upon shipments herein, C. L., are unreasonable to the extent that they exceeded the first class

rate. Reparation awarded. Du Pont de Nemours Powder Co. v. L. & N. R. R. Co., 33 I. C. C. 288.

(g) The Commission considered the proposed cancellation of joint through rates on high explosives shipped from Baltimore, Wilmington and Philadelphia, to Buffalo, N. Y., thence through Ontario via the G. T. Ry. of Canada, and thence to Michigan destinations via the G. T. W. Ry. This would lead to material increases. For instance from Philadelphia, Pa., to Caseville, Mich., it would increase the less-than-carload rate from $1.32 to $1.76 and the carload rate from 66 to 88c. Under the Canadian Act respecting railways, carriers were relieved from any obligation to carry high explosives, and the G. T. Ry. of Canada denied the power of the Commission to require it to participate in the traffic under joint through rates; without however proposing to retire from the traffic between domestic points in this country. HELD, (1) that while the principle involved was not that decided in Paper Co. v. D. & H. Co., 33 I. C. C., 270, since the traffic both originated in and was destined to points in the United States, no determination of the question of jurisdiction was advisable or necessary; but (2) that respondents should withdraw the tariffs canceling the joint rates until through routes lying wholly within the United States had been abolished for the movement of high explosives to the destinations in question at joint rates named in the tariffs under suspension. Rates on High Explosives to G. T. Ry. System Stations, 33 I. C. C. 567.

(h) The fact that it is dangerous to leave cars loaded with sulphuric acid standing in yards of carriers presents a reason why unloading should be effected within 48 hours. International Agricultural Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201.

(i) Normally the rates on high explosives in carloads should not exceed the rates on articles taking the first-class rating, while the less-than-carload rates should not exceed double first class. Nitro Powder Co. v. W. S. R. R., 35 I. C. C. 77, 79.

(j) In the establishment of through routes and joint rates, a carrier will not be required to carry high explosives through a tunnel in violation of a state statute against it. Nitro Powder Co. v. W. S. R. R., 35 I. C. C. 77, 79.

(k) Complainant attacked the rates on high explosives from Kingston and Port Ewen, N. Y., to Boston, Mass., and other New England points as unreasonable and discriminatory compared with rates from more distant points to the same destinations. The rate from both points of origin to Boston was 50c per 100 lbs., c. l., and $1.00 l. c. l., yielding 3.9 and 7.85c per ton-mile, for an average haul of 255 miles. The same rates from Emporium, Pa., yielded 1 1-3c and 2¾c per ton-mile for 725 miles. From producing points in trunk-line territory to local New England points the combination on Boston was 4 times the first class Pittsburg-Boston rate on carloads; double the first class rate, l. c. l. HELD, that the rates on high explosives from Kingston and Port Ewen to Boston and other points in New England were unreasonable to the extent that they exceeded tthe first-class and double first-class rates between the same points. Establishment of joint through rates directed. Reparation awarded. Nitro Powder Co. v. W. S. R. R., 35 I. C. C. 77.

EXPORT RATES AND FACILITIES.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§2. Establishment and construction.
II. BILLS OF LADING.
III. DISCRIMINATION.
IV. PUBLICATION AND TARIFFS.
V. REASONABLENESS.
VI. STORAGE AND DEMURRAGE.

CROSS REFERENCES

See Absorption of Charges, §3 (d); Demurrage, §3 (b), §15 (g); Discrimination, §4 (g), (j); Equalization of Rates, §3 (ff); Evidence, §39 (a); Foreign Commerce; Long and Short Hauls, §5 (c); Reasonableness of Rates, §7½ (e); Switch Tracks and Switching, §9 (b).

I. CONTROL AND REGULATION.

See Control and Regulation.

§2. Establishment and Construction.

(a) Complainant attacked the inland proportion of $1.25 on the through rate

of $1.75 charged on all commodities from Chicago to Australasia via Vancouver, as unreasonable and discriminatory compared with inland proportions of 90c and 81.4c on a through rate of $1.50 from Chicago to the Orient via Vancouver and Puget Sound ports. From Chicago to Vancouver is 2,200 miles, and to the latter ports 2,214 miles. The tariffs provided for mixed carloads of shipments destined to the Orient and Australasia, the transportation service being identical as to the two kinds of traffic, except that delivery thereof is made at different wharves. The existing first-class rate from Chicago to Pacific coast terminals was $3.40; to Vancouver, $3.45. The publication of the "all commodities" rate to Vancouver, which as to Oriental business was 10c less than the Class E rate, and as to Australian business 20c less than the Class B rate, together with the privilege of mixing freight for Australia with freight for China and Japan, constituted a substantial reduction from the class rates. But the through rate to Australasia via Vancouver was lower than the domestic rate to the port, and the mixing privilege was not granted in connection with the latter. HELD, that different export rates to a port dependent on the foreign destination of the traffic are not per se unlawful. It not appearing that complainant was subjected to undue prejudice or disadvantage by the difference in rates to Australia and the Orient, complaint dismissed. Erickson Co. v. C. M. & St. P. Ry. Co., 29 I. C. C. 414.

(b) The Commission has never held it unlawful per se to publish different export rates to a port, dependent on the foreign destination of the traffic. Erickson Co. v. C. M. & St. P. Ry. Co., 29 I. C. C. 414, 416.

(c) Carriers should be required to establish through routes and joint rates on export cotton from points of origin through compress points to seaboard; and it is within the province of the Commission to require this, it being understood that the originating carrier may get the haul over the full length of its line between the point of origin and the port. A given port is justly entitled to the competitive advantage that will accrue to it from such an arrangement. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 277.

II. BILLS OF LADING.

See Through Routes and Joint Rates, §12.

(a) A through export bill of lading issued by the rail carrier at point of shipment entails no responsibility on the part of the rail carrier after it delivers the shipment at its dock or after it is delivered to the connecting carrier at its interchange track at the port, when delivery is to be made to a dock not reached by its rails. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 280.

(b) The method of handling export traffic whereby the shipper in must advise the carrier of the name of ship to be used and the ocean rate quoted him, is condemned by the Commission, since such a system makes it possible for the carrier to resort to unfair practices in diverting traffic from one port to another through the medium of lower rate quotations by other steamships and through other ports. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 280.

(c) Coal placed on a vessel for use as fuel on that vessel can not be regarded as a coastwise or export movement of that commodity in the sense in which the term is used in freight tariffs and commerce generally. An export or coastwise movement of a commodity from a port implies delivery at some other port. The ownership of the coal passed to the ship's owner when it was loaded into the bunkers, and it thereupon ceased to be an article of commerce, as would a piece of machinery installed on the vessel as part of its equipment. The Supreme Court of the United States has held that lubricating oil placed on board for use and consumed in use on a vessel bound for a foreign port is not exported. Basin Supply Co. v. T. & F. S. Ry., 33 I. C. C. 157, 158.

(d) "Through bill of lading" entails no responsibility after delivery of shipment at dock or to connecting carrier at interchange track in Mobile. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 280.

III. DISCRIMINATION.

See Discrimination.

(a) Complainants and interveners attacked the rate of 25c per 100 lbs. for the transportation of unmanufactured tobacco from Henderson and

Owensboro, Ky., to New Orleans, La., on traffic destined to European points other than Liverpool or Bristol, as unjustly discriminatory compared with rates of 21½c and 22c on shipments from the same points of origin to the latter-named points. It appeared that competitors of the interveners shipped to Liverpool and Bristol, while interveners shipped to Belfast and Dublin; but the shipments to all four ports were made under yearly contracts with the ocean steamship companies, whereby both competitors and interveners were to pay a through rate of 55c per 100 lbs. from Kentucky points to the European points of destination, the steamship lines absorbing the charge for railroad transportation. HELD, that mere proof of specific shipments made and freight paid, and the amount for which reparation is sought, does not make out a prima facie case for reparation, but the complainant must show how the discrimination affected him to his damage. The rates complained of were unduly preferential, but it not appearing that interveners would have paid any less if the rates had been identical, or that their competitors had any advantage, the claim for reparation was denied. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32.

(b) The restriction to certain routes of the application of export rates may not be found unreasonable. Rates on Cottonseed and Its Products, 28 I. C. C. 219.

(c) The inbound rates to Shreveport and Texarkana should be adjusted independent of the outbound rates, and in such manner as to avoid unjust discrimination. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 576.

(d) Rate on pine doors from Merrill, Wis., to various Atlantic ports when for export found to be unjustly discriminatory as compared with the rates contemporaneously in effect on pine lumber when for export. Stange Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-244.

(e) Charging different rates when traffic is intended for different foreign destinations for the movement from the same interior point to the same port of transshipment is an unjust discrimination, in violation of section 3. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32.

(f) Commission has never held that it is per se unlawful to publish different export rates, dependent on the foreign destination. Erickson Co. v. C. M. & St. P. Ry. Co., 29 I. C. C. 414, 416.

(g) Inland proportion of through rates on commodities from Chicago, Ill., via Vancouver, B. C., on traffic destined to Australia exceeds the inland proportion from the same point of origin to Japan. HELD, that the different export rates do not result in undue prejudice. Erickson Co. v. C. M. & St. P. Ry. Co., 29 I. C. C. 414.

(h) Rate on lumber from Pineville, La. to New Orleans for export, not found unreasonable or discriminatory, the complaint being based upon a contractual relationship between the parties. Alexandria Lumber Co., Ltd., v. L. R. & N. R. R. Co. Unrep. Op. A-710.

(i) Refusal to apply export rates on structural steel shipped from Baltimore, Md., to the Philadelphia navy yard, when for export to foreign possessions of the United States, while permitting application of export rates when traffic is delivered over railroad terminals, not found unreasonable or unduly discriminatory. United States v. P. R. R. Co., Unrep. Op. A-957.

IV. PUBLICATION AND TARIFFS.

See Tariffs.

(a) Higher domestic rate properly assessed where no notation made on bill of lading, even though intention of complainant to forward shipments to foreign country. Port Arthur Rice Milling Co. v. T. F. & S. Ry. Co., 28 I. C. C. 697, 699.

(b) Traffic is either local or export; if export, it must take the export rate. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 282.

(c) Cotton moving into Mobile at a local rate, and later declared to be for export will necessarily take the through export rate, plus the terminal charge to ship side. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 281.

(d) Export cotton rates to Mobile should hereafter be quoted as for station delivery at interchange points, and

terminal charge for shipside delivery should be quoted as an additional charge. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 279.

V. REASONABLENESS.

See Reasonableness of Rates.

(a) A lower rate is generally in effect when traffic is for coastwise or export destinations. Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co., 28 I. C. C. 697.

(b) Rate on lumber from Fullerton, La., to Texas City, Tex., higher for coastwise than for export traffic not found unreasonable. Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

(c) In fixing the charge for a terminal service on export traffic the service is considered in the nature of an additional service, for which a reasonable and compensatory charge should be assessed. Mobile Chamber of Commerce v. M. & O R. R. Co., 32 I. C. C. 272, 279.

(d) The fact that export cotton traffic yields a comparatively ton-mile earning is no conclusive test of unreasonableness. The freight paid becomes part of the purchase price which is paid by the foreign purchaser, with which the Commission has no concern except that no discrimination exist thereunder prejudicial to the shipping of any port. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 275.

(e) Complainant attacked the reasonableness of export cotton rates from all points in the southeast located on the lines of the rail carriers serving Alabama, Mississippi, Tennessee, Georgia, Florida and the Carolinas, to Mobile, Ala., and the practices of the delivering carriers at Mobile concerning terminal privileges. Mobile is served directly from all stations on the lines of the Southern Ry., the M. & O. R. R., the L. & N. R. R. and the N. O. M. & C. Ry. All the other carriers serve Mobile in connection with these lines, either under joint rates or combination rates. There are no joint rates to Mobile on export cotton shipped from points on the A. C. L. R. R., C. of Ga., and certain divisions of the S. A. L. R. Rs. There are no through rates from points on the I. C. R. R. and the Y. & M. V. Ry., except from three points from which there is competition with the Southern Ry. in Mississippi. All of the defendants, except the I. C. R. R. and Y. & M. V. R. R. maintain joint through rates or individual rates from points of production on their lines to Savannah for export. **Unreasonable Rates**—The export cotton rate adjustment is said to be the result of many years of tariff construction. The rate from a given point to each port is made with relation to the rate to some other port, so that a reduction in one rate would necessarily entail reductions in others. Also the domestic rate bears a relation to the export rate and would be thrown out of line by such reduction. Cotton forms a considerable part of the traffic of the southern carriers, and any small reduction in rate would therefore entail a large reduction in revenue. HELD, such being the case, the record herein does not warrant the Commission in taking any action that would affect such a large territory. There is no complaint as to the actual rate paid, and the only feature of the matter the Commission has to consider in this connection is that no discrimination shall exist that is prejudicial to any port. The system of rates known as penalty rates is wholly out of line with the ethics of modern rate making. The system had its origin before the time of federal rate regulation. Whatever reason existed for it then, there is no justification now for its continuation. The idea was that a higher rate than the normal should be exacted for the movement from the point of origin to the compress point. If shipped by the same carrier from the compress point to the port, the higher rate would be applied on the through rate from point of shipment to port. The local rates in many cases were less than these penalty rates. All the carriers defendants here do not apply the penalty rate system, and those that do so have recently so modified it that when the cotton goes no further than the compress point, the excess over the local rate is refunded. This penalty system must be abandoned. One rate shall be established from point of origin to the compress point and this shall be no more than the reasonable local rate. Where the through rate to the port includes compression by the carrier, such compression should be performed by the carrier receiving the cotton at the compress point. **Discriminating Rates and Practices**—The result of the penalty rate system was to enable the originating carrier to control the haul from the compress point to the port. The shipper could not ship his cotton to a port not served by the originating carrier, owing to the excessive rate. It is intended that the rate to

Owensboro, Ky., to New Orleans, La., on traffic destined to European points other than Liverpool or Bristol, as unjustly discriminatory compared with rates of 21½c and 22c on shipments from the same points of origin to the latter-named points. It appeared that competitors of the interveners shipped to Liverpool and Bristol, while interveners shipped to Belfast and Dublin; but the shipments to all four ports were made under yearly contracts with the ocean steamship companies, whereby both competitors and interveners were to pay a through rate of 55c per 100 lbs. from Kentucky points to the European points of destination, the steamship lines absorbing the charge for railroad transportation. HELD, that mere proof of specific shipments made and freight paid, and the amount for which reparation is sought, does not make out a prima facie case for reparation, but the complainant must show how the discrimination affected him to his damage. The rates complained of were unduly preferential, but it not appearing that interveners would have paid any less if the rates had been identical, or that their competitors had any advantage, the claim for reparation was denied. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32.

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V. REASONABLENESS.

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(c) In fixing the charge for a terminal service on export traffic the service is considered in the nature of an additional service, for which a reasonable and compensatory charge should be assessed. Mobile Chamber of Commerce v. M. & O R. R. Co., 32 I. C. C. 272, 279.

(d) The fact that export cotton traffic yields a comparatively ton-mile earning is no conclusive test of unreasonableness. The freight paid becomes part of the purchase price which is paid by the foreign purchaser, with which the Commission has no concern except that no discrimination exist thereunder prejudicial to the shipping of any port. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 275.

(e) Complainant attacked the reasonableness of export cotton rates from all points in the southeast located on the lines of the rail carriers serving Alabama, Mississippi, Tennessee, Georgia, Florida and the Carolinas, to Mobile, Ala., and the practices of the delivering carriers at Mobile concerning terminal privileges. Mobile is served directly from all stations on the lines of the Southern Ry., the M. & O. R. R., the L. & N. R. R. and the N. O. M. & C. Ry. All the other carriers serve Mobile in connection with these lines, either under joint rates or combination rates. There are no joint rates to Mobile on export cotton shipped from points on the A. C. L. R. R., C. of Ga., and certain divisions of the S. A. L. R. Rs. There are no through rates from points on the I. C. R. R. and the Y. & M. V. Ry., except from three points from which there is competition with the Southern Ry. in Mississippi. All of the defendants, except the I. C. R. R. and Y. & M. V. R. R. maintain joint through rates or individual rates from points of production on their lines to Savannah for export. **Unreasonable Rates**—The export cotton rate adjustment is said to be the result of many years of tariff construction. The rate from a given point to each port is made with relation to the rate to some other port, so that a reduction in one rate would necessarily entail reductions in others. Also the domestic rate bears a relation to the export rate and would be thrown out of line by such reduction. Cotton forms a considerable part of the traffic of the southern carriers, and any small reduction in rate would therefore entail a large reduction in revenue. HELD, such being the case, the record herein does not warrant the Commission in taking any action that would affect such a large territory. There is no complaint as to the actual rate paid, and the only feature of the matter the Commission has to consider in this connection is that no discrimination shall exist that is prejudicial to any port. The system of rates known as penalty rates is wholly out of line with the ethics of modern rate making. The system had its origin before the time of federal rate regulation. Whatever reason existed for it then, there is no justification now for its continuation. The idea was that a higher rate than the normal should be exacted for the movement from the point of origin to the compress point. If shipped by the same carrier from the compress point to the port, the higher rate would be applied on the through rate from point of shipment to port. The local rates in many cases were less than these penalty rates. All the carriers defendants here do not apply the penalty rate system, and those that do so have recently so modified it that when the cotton goes no further than the compress point, the excess over the local rate is refunded. This penalty system must be abandoned. One rate shall be established from point of origin to the compress point and this shall be no more than the reasonable local rate. Where the through rate to the port includes compression by the carrier, such compression should be performed by the carrier receiving the cotton at the compress point. **Discriminating Rates and Practices**—The result of the penalty rate system was to enable the originating carrier to control the haul from the compress point to the port. The shipper could not ship his cotton to a port not served by the originating carrier, owing to the excessive rate. It is intended that the rate to

tablishment of the rate or the movement of the traffic to Montreal. HELD, that the Commission has no power to compel carriers to establish rates for the purpose of meeting certain competition and that the rates involved herein have not been shown to be unreasonable or otherwise unlawful. New York Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212.

(g) Rate on lumber from Sondheimer, La., to New Orleans, La., for export, not found unreasonable. Authority to charge a higher rate from Sondheimer than from Memphis, Tenn. denied. Sondheimber Company v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-737.

(h) Complainant attacked the export rate of 8c per 100 lbs. on lumber and articles taking the lumber rate from Mackland, Thistlewaite, and other stations between Mackland, and Opelousas, to New Orleans, La., as unreasonable. Mackland and Thistlewaite were 176 and 174 miles, respectively, from New Orleans. From Sabine River, Port Barre, Baton Rouge and Mamou, at distances of 252, 175, 203, and 208, the rates did not exceed 7c. HELD, that the defendant had not justified the existing rate from Mackland and other points involved, which was unreasonable to the extent it exceeded 7c. Reparation denied. Lumberman's Asso. of New Orleans v. M. L. & T. R. R. & S. S. Co., 33 I. C. C. 516.

VI. STORAGE AND DEMURRAGE.

See Demurrage; Storage.

(a) The export shippers at New Orleans have no yard facilities of their own, and shipments for them reaching New Orleans on local bills of lading are held by the railroads until orders are given for forwarding to the public docks. Anderson-Tully Co. v. M. L. & T. R. R. & S. S. Co., 30 I. C. C. 140, 144.

EXPRESS COMPANIES.

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission
- §1½ State regulation.

II. FACILITIES.
- §1¾. In general.
- §2. Delivery and receipt.
- §3. C. O. D. shipments.
- §4. Export service.
- §5. Free transportation.
- §6. Money orders.
- §7. Prepaid and collect shipments.
- §8. Special contracts.
  - (1) Limitation of liability.

III. DISCRIMINATION.
- §9. In general.

IV. RATES.
- §10. Reasonableness in general.
- §11. Specific rates.
  - (1) General special rates.
  - (2) Rates based on value.
  - (3) Rates based on weight.

V. ROUTE.
- §12. In general.

VI. TARIFFS.
- §13. Construction.
- §14. Double graduate charges.
- §15. Graduate scale system.
- §16. Mixed shipments.

VII. EVIDENCE.
- §17. In general.
- §18. Bulk.
- §19. Commercial conditions.
- §20. Comparisons.
- §21. Competition in general.
  - (1) Parcel post.
- §22. Long maintenance of rate.
- §22½. Operating expenses.
- §23. Percentage of freight rate.
- §24. Profit and capitalization.
- §25. Surplus.
- §26. Value of express property.

VIII. COLLECTION OF CHARGE.
- §27. Overcharges and revision of bills.

IX. CRIMINAL LIABILITY.
- §28. In general.

X. RULES AND REGULATIONS.
- §29. In general.
- §30. Claims.
- §31. Inspection.
- §32. Marking and packing.
- §33. Reconsignment.
- §34. Returned shipments.
- §35. Storage.

XI. THROUGH ROUTES AND JOINT RATES.
- §36. In general.
- §37. Divisions.

XII. LIABILITY FOR DAMAGES.
- §38. In general.

CROSS REFERENCES

See Blanket Rates, §10½ (f); Courts, §11 (c); Classification, §5 (u); Loss and Damage, §5

(a), §6 (s); Refrigeration, §7 (c); Routing and Misrouting, §3 (a).

II. FACILITIES.

See Facilities.

§1¾. In General.

(a) Express service desired because shipments to smaller communities are not of sufficient size to warrant movement in carload quantities, and the less-than-carload service by freight is too slow except where package cars are run. R. R. Com'rs of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635.

(b) Fruit from Cedar Gap, Mo., to St. Louis, Mo., reconsigned to Indianapolis, Ind., via the line of a competing express company in order to make earlier delivery, not found to have been overcharged or misrouted. Ozark Fruit Growers' Asso. v. U. S. Exp. Co., Unrep. Op. A-736.

(c) Rate of $2.33 1-3 per 100 lbs. on strawberries, in carloads, from Florin, Cal., to Helena, Mont., involving a three-line haul, a factor of which is through mountainous territory, not found unreasonable. Lindsay & Co., Ltd., v. Wells Fargo Co., Unrep. Op. A-755.

§2. Delivery and Receipt.

See Transportation, §5.

(a) Respondents shall be required to issue a joint publication where the established pick-up and delivery limits shall be specifically defined. In re Express Rates, 28 I. C. C. 132.

(b) No fair allowance for pick-up and delivery service on small packages carried short distances under percentage contracts. In re Express Rates, 28 I. C. C. 132, 141.

(c) Maintaining pick-up service on oyster shipments at Norfolk and not maintaining same service at Baltimore not undue discrimination. Atlantic Packing Co. v. American Exp. Co., 28 I. C. C. 244, 246.

(d) Express service desired because shipments to smaller communities are not of sufficient size to warrant movement in carload quantities, and the less-than-carload service by freight is too slow except where package cars are run. R. R. Com'rs of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635.

§3. C. O. D. Shipments.

(a) Amount of c. o. d. bill for collection from a consignee shall be considered as declaration of value of shipments, unless greater value is declared. In re Express Rates, 28 I. C. C. 132, 138.

§8. Special Contracts.

See Special Contracts.

(1) Limitation of Liability.

See Loss and Damage, §9.

(a) Liability of carrier shall be limited to maximum of $50 on each shipment weighing less than 100 lbs., and to maximum of 50c per lb. on shipments weighing more than 100 lbs., unless great value declared at time of shipment. In re Express Rates, 28 I. C. C. 132, 137.

(b) Under the Carmack Amendment an express company, by stipulation in an express receipt may limit its liability to $50, where no greater value is placed on goods at the time of delivery to the company. Pacific Express Co. v. Krower (Tex., 1914), 163 S. W. 9, 10.

(c) Consignee delivered to defendant express company at Chicago package containing millinery of the value of $251.50, to be shipped c. o. d. to plaintiff at Little Rock, Ark. At the time defendant received the parcels for transportation nothing was said relative to value or charges; but the shipper was given a receipt, by the terms of which liability was limited to $50 unless a greater value was declared and charges paid thereon. Defendant had on file with the Commission a tariff providing for increased charges where the value exceeded $50. The shipment was destroyed in transit by train robbers. HELD, that under section 20 of the Interstate Commerce Act as modified by the Carmack Amendment, and in view of the construction placed thereon by the U. S. Supreme Court, defendant was liable only in the sum of $50 United States Express Co. v. Cohn (Ark., 1913), 157 S. W. 144.

(d) Where a trolley express line made no through rate to a point on the line of a connecting express company, but charged a flat rate for transportation to the point of connection, plus the charges of the latter company which it advanced, and the shipper having, through a long

course of dealing with the latter, knowledge that its regulations on file with the Commission were based on an agreed valuation, unless a higher valuation was disclosed and a higher rate paid, the liability of the trolley express company for loss occurring to goods while in the possession of the connecting line was limited to the valuation upon which the rate of the connecting line was based, though its bill of lading did not provide for limitation of liability. Glonlyon Dye Works v. Interstate Exp. Co. (R. I. 1914), 91 Atl. 5, 7.

III. DISCRIMINATION.

See Discrimination.

§9. In General.

(a) Arrangements by which respondents provide receiving depots for shipments of oysters at Baltimore, instead of pick-up wagon service, not found discriminatory. Atlantic Packing Co. v. American Express Co., 28 I. C. C. 244.

IV. RATES.

§10. Reasonableness in General.

See Reasonableness of Rates.

(a) Present rates of respondent express carriers between points named in order herein are unduly prejudicial so far as they exceed rates hereinafter prescribed. In re Express Rates, 28 I. C. C. 132, 152.

(b) Respondents shall adopt and jointly publish a new and uniform classification. In re Express Rates, 28 I. C. C. 132, 137.

(c) Express service desired because shipments to smaller communities are not of sufficient size to warrant movement in carload quantities, and the less-than-carload service is too slow except where package cars are run. R. R. Com'rs of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635.

(d) Express rates kept high enough to prevent the movement of so large a volume of tonnage as would impair the efficiency of passenger service. Railroad Commissioners of Fla. v. S. Exp. Co., 28 I. C. C. 634, 636.

(e) Complainant assailed generally the whole schedule of commodity rates on citrus fruits, pineapples, canteloupes, and vegetables, from points of production in Florida to defendant's stations in territory south of the Ohio and Potomac rivers and east of the Mississippi river. It also attacked the rates on vegetables to Atlanta as unlawful because in excess of those charged to Cincinnati. There was an important consuming public located at smaller points not justifying carload shipments to which complainants could profitably distribute these products under reasonable express rates. Less-than-carload service by freight was too slow for the perishable traffic involved, and existing express rates had a tendency to prohibit the movement of the traffic. High rates were hardly justifiable as necessary to present a movement of such tonnage as to impair the efficiency of the passenger service, since when the Florida ripening season came on the carriers put on special express trains carrying several cars of express matter. Direct shipments by express would eliminate the middleman's profit, and save a great portion of the crop which, owing to sporadic ripening, would perish unless rushed direct to the consumer. The character of service rendered was comparatively inexpensive for express service; collection and delivery being to a large extent eliminated, and the movement in many cases (17½ miles an hour) approximating a fast-freight service. HELD, that the record in this case having been complete and the case submitted while the Commission was engaged in a general investigation of the rates, practices and methods of express companies, as a result of which defendant has provided for the application of second-class rates on the commodities here involved in all cases where the rates are in excess thereof, no order will be entered until the rates resulting have been given a fair test. Railroad Commissioners of Florida v. Southern Express Co., 28 I. C. C. 634.

(f) As a result of the general express investigation, the present rates between Denver and eastern cities were made effective and are held to be reasonable. Kindel v. Adams Express Co., Unrep. Op. A-620.

(g) Complainants attacked the express rates on strawberries and cherries in carloads from certain points in Oregon and Washington to Helena, Butte, Great Falls and Billings, Mont., as unreasonable and discriminatory, and the refrigeration charges as unjust and unreasonable. Competitors in Oregon

and Washington shipped in l. c. l. lots, and it was of the "spread" between the carload and l. c. l. rates that complaint was made. For instance, from Seattle and Tacoma, Wash., and Hood River and Freewater, Oreg., the l. c. l. rates to Helena, Butte, Great Falls and Billings were $1.75,. $1.75 and $1.85, and the l. c. l. rates were $1.98¾, $1.98¾, $2.25 and $2.40. At time of hearing the movement in carloads was 60 per cent of the total. Berries in corloads reached the consumers in better condition, due to better refrigeration than was possible with l. c. l. lots. The Commission had prescribed the following any-quantity rates for transportation of articles of food and drink by express:

Block	From	To Helena Block 313	To Butte Block 313	To Great Falls Block 214	To Billings Block 417
203	Seattle, Wash.	$2.70	$2.70	3.11¼	$3.45
203	Tacoma, Wash	2.70	2.70	3.11¼	3.45
404	Hood River, Oreg.	2.62½	2.62½	2.88¾	3.33¾
407	Freewater, Oreg.	2.28¾	2.28¾	2.62½	3.11¼

Refrigeration charges were: for initial icing, $5 per ton of ice used, minimum $20 per car; and for transit icing $15 to Billings and $10 to the other points, no charge being imposed where there was no re-icing. HELD, following In Re Express Rates, Etc., 24 I. C. C. 380, and 28 I. C. C. 131, that the existing carload commodity rates for the transportation of strawberries and cherries between the points in question were relatively unreasonable and unjustly discriminatory. Rates for initial icing found reasonable, and rates for re-icing not found to be unreasonable. Reparation denied. Lindsay & Co. v. Northern Exp. Co., 33 I. C. C. 394.

(h) On March 9, 1914, the Commission so amended its holding in Express Investigations, 28 I. C. C., 131, as to require the maintenance of a rating on ice-cream not in excess of second class, subject to minimum charges of 49c on a package of 100 lbs. Complainant attacked this minimum and the charges of 25c on returned empties of over 5 gal. capacity and 15c on smaller sizes, as unreasonable. The average shipment of ice cream was 5 gal., the packer weighing 50 lbs., and contents 100 lbs., and average movement being from 30 to 40 miles. Ice cream was generally carried at higher rates than other food products, and the charge on returned empties was higher than on other food product empties. Aggregate shipment of empties was provided for. HELD, that the evidence failed to show that either the minimum charges on ice cream or those on returned empties were unreasonable; and that the rates on ice cream and ice cream empties were not fairly comparable with those on other food products and these carriers. National Ass'n. of Ice Cream Mfrs. v. Express Co., 33 I. C. C. 411.

(i) Carload rate and minimum weight of 10,000 lbs. as applied to two iron beams from Fort Wayne, Ind., to Marathon, Iowa, and shipped in special car, not found unreasonable. American Steel Dredge Co. v. American Exp. Co., Unrep. Op. A-807.

(k) In 24 I. C. C. 380, and 28 I. C. C. 131, the Commission prescribed a uniform schedule of rates, classification, rules, and regulations for the principal express companies of the United States. Petitioners filed a petition for rehearing, alleging that, despite all possible economies and an increase in volume of business, compliance therewith had resulted in a net loss. The revenues of petitioners, representing 95 per cent of the express business of the country, had decreased from $71,264,973.67 in 1914 to $64,703,118.58 in 1915, a decrease of 9.21 per cent. Operating expenses had decreased by 5.96 per cent. Net operating revenue decreased from $1,253,438.14 to a deficit of $1,132,811.84 and operating income from $68,969.04 to a deficit of $2,380,894.29. The number of shipments handled had increased 1.16 per cent; average charge per shipment had decreased 5.78 per cent. In 1915 petitioners handled 2,225,928 more shipments than in 1914, with a decrease in revenue of $13,680,810.66. The mileage operated by petitioners and payments for express privileges was as follows. (Table Page 382.)

The existing express rates were composed of three factors: 20c per shipment for collection and delivery service, a rail terminal allowance of 25c, and the rail transportation charge, varying with weight and distance. Transportation, as proposed, of the allowances for the first and second factors would result in an

	Mileage			Express Privileges		Decrease per cent
	1914	1915	Increase per cent	1914	1915	
Adams	33,056.72	37,866.46	11.84	$18,073,914.76	$16,188,445.53	0.43
American	58,385.80	65,948.23	12.95	21,298,707.55	21,757,187.73	2.15
Southern	32,713.85	33,475.85	2.33	8,117,641.75	7,366,095.81	9.26
Wells Fargo	65,817.42	74,211.96	12.75	16,038,542.56	17,567,425.98	9.53

increase of 3.86 per cent in gross revenue. HELD (1) that the plan proposed would not result in unreasonable rates; and (2) proposal to increase the base rate in zone 1, east of the Mississippi River and North of the Ohio, denied. Express Rates, Practices, Accounts, and Revenues, 35 I. C. C. 3.

§11. Specific Rates.

§11. (2) Rates Based on Value.

See Released Rates.

(a) Where shipper refused to state, as required by tariff, the market value of shipment of stock and bonds, carrier was under no obligation to transport such securities and it was its duty to refuse the shipment. Acme Portland Cement Co. v. Am. Exp. Co., 28 I. C. C. 316.

§11 (4) Block System.

(a) Block-system rates not to be disturbed because of showing that their use will increase cost of transporting bread, other bakery products, and yeast. In the Matter of Express Classification of Bread, etc., Unrep. Op. A-671.

(b) Express rates between Denver, Colo., and eastern cities, on same basis governing block-system rates adopted by Commission are substantial reductions from former rates. Kindel v. Adams Express Co., Unrep. Op. A-620.

V. ROUTE.

See Routing and Misrouting, §7 (t).

§12. In General.

(a) Respondents should provide receiving depot for oysters in section of city in which complainants are located. Atlantic Packing Co. v. Am. Exp. Co., 28 I. C. C. 244, 246.

(b) Express companies not liable for misrouting where instructions of shipper are followed. Brackett Co. v. G. N. Express Co., 29 I. C. C. 667, 668.

(c) Reparation awarded on account of misrouting cherries from North Yakima, Wash., consigned to Minneapolis, Minn., but diverted to Chicago, Ill., moving the entire route via the Northern Express Co., instead of via the American Express Co., from Minneapolis under a joint rate lower than that charged. Yakima County Horticultural Union v. Northern Express Co., Unrep. Op. A-916.

VI. TARIFFS.

See Tariffs.

§13½. Aggregated Shipments.

(a) The rule of an express company that shipments made in one day from one consignor to one consignee shall be aggregated if thereby lower charges are imposed is construed to mean that not all such shipments need be aggregated but that the shiments must be combined in such a manner that the lowest possible amount of total charges shall be assessed. United States v. Skinner, 218 Fed. 870, 880.

VII. EVIDENCE.

See Evidence.

§17. In General.

(a) Expense of franks not legitimately to be charged to paying patrons. In Re Express Rates, 28 I. C. C. 132, 150.

(b) Express companies are also investment companies, bankers, carriers on the high seas and in foreign lands, and agents, performing for pay a wide variety of services other than transportation, both at home and abroad. In re Express Rates, 28 I. C. C. 132, 149.

(c) Express rates kept high enough to prevent the movement of so great a volume of tonnage as would impair the efficiency of passenger service. Railroad commissioners of Fla. v. Southern Express Co., 28 I. C. C. 634, 636.

§21. Competition.

See Competition.

§21. (1) Parcel Post.

(a) Establishment of parcel post is not a justification for any higher scale of rates than otherwise would be rea-

sonable. In re Express Rates, 28 I. C. C. 132, 152.

§23. Percentage of Freight Rate.

(a) Under percentage contracts, expenses can be made to increase faster than revenue whenever contracting parties so desire. In re Express Rates, 28 I. C. C. 132, 150.

(b) Percentage contracts can not be accepted as basis for making rates. In re Express Rates, 28 I. C. C. 132, 141.

(c) Commission cannot accept percentage contracts between express companies and rail carriers as making legal or moral necessity for higher rates than could be justified otherwise. In re Express Rates, 28 I. C. C. 132, 140.

(d) Express rate not found unreasonable in so much as it exceeded the all-rail freight rate. Tyler Grocery Co. v. S. Exp. Co., Unrep. Op. A474.

X. RULES AND REGULATIONS.

§29. In General.

(a) Directory of express stations shall be issued not later than October 15, 1913, when block system of stating rates and new rates become effective. In re Express Rates, 28 I. C. C. 132, 136.

(b) A Directory of Express Stations fixing location of each such station by block number and sub-block letter should be published. Pick-up and delivery limits should be specifically defined. Block system of stating rates should be adopted. A new and uniform classification should be adopted. Rules and regulations proposed in former report should be adopted. Express receipt herein prescribed should be adopted. Joint rates proposed in former report should be published. Joint tariff as proposed in former report conforming to those contained herein should be published. Order of June 8, 1912, amended so as to require the attachment of the waybill and label therein prescribed to only one package in a shipment of two or more packages of perishable property. In re Express Rates, 28 I. C. C., 132.

§32. Marking and Packing.

See Classification, §14 §16.

(a) Complainant attacked the charges collected for the shipment by express of liquor in glass from Minneapolis, Minn., to Edinburg, N. D., and return. Complainant delivered for transportation a box containing liquor, marked: "James Sterlangson, Svold, via Edinburg, N. D.," and presented a receipt, which had been made out by complainant, and which correctly had the consignee and destination as: "J. Sturlangson, Svald v. Cavalier, N. D." Both Edinburg and Cavalier were situated on defendant's lines, with Svold, a cross-country point, located between them. The package was carried to Edinburg in accordance with the instructions on the box. No delivery to consignee being possible at that point, it was, at complainant's request, returned to Minneapolis; and charges each way, at the published rate, collected. HELD, that any damages complainant may have suffered were due to its own act in improperly marking the package, and are not justly chargeable to misrouting or other improper conduct by defendant. Complaint dismissed. Brackett Co. v. G. N. Exp. Co., 29 I. C. C. 667.

(b) Waybill and label need be attached to only one package in a shipment of two or more packages of perishable freight. In re Express Rates, 28 I. C. C. 132, 136.

(c) Order of June 8, 1912, amended so as to require the attachment of the waybill and label therein prescribed to only one package in a shipment of two or more packages of perishable property. In re Express Rates, 28 I. C. C. 132.

XI. THROUGH ROUTES AND JOINT RATES.

See Thru Routes and Joint Rates.

§36. In General.

(a) The Direct Routing Committee should study existing express routes and consider complaints of indirect or circuitous routing. In re Express Rates, 28 I. C. C. 132, 136.

(b) Rates on fresh fish from Seattle, Wash., to St. Paul, Minn., by passenger train service and from St. Paul to Chicago and Philadelphia by express service found unreasonable to the extent that they exceeded through express rates. Case held open for proof. New England Fish Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-924.

FABRICATION-IN-TRANSIT

See Facilities and Privileges, §15 (f), (3y), (3z); Subetitution of Tonnage, §2 (a).

FACILITIES AND PRIVILEGES.

I. JURISDICTION OF COMMISSION.
§1. In general.
II. CARRIER'S DUTY TO FURNISH OR PERMIT.
§2. In general.
§3. Compression.
§4. Concentration.
§5. Cooperage and bailing.
§6. Dumping and trimming.
§7. Back haul.
§8. Free storage.
§9. Grain doors.
§10. Loading, unloading, bracing, etc.
§11. Notifying shipper of rejection.
§12. Scaleage deductions and shrinkage.
§12½. Special services.
§13. Staking and binding.
§14. Storing, grading and resacking.
§15. Transit.
§15½. Transshipment.
§16. Wharfage.
III. PUBLICATION AND TARIFFS.
§17. Obligation to publish.
§18. Reshipping under through rate.
§19. Retroactive application.
§20. Substitution of tonnage.
IV. DISCRIMINATION.
§21. In general.
V. REPARATION.
§22. In general.

CROSS REFERENCES

See Classification, §7 (p); Discrimination, §1 (g); Express Companies, II.

I. JURISDICTION OF COMMISSION.

§1. In General.

(a) A common carrier may as to some of its work act in a strictly private capacity, and it may as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services; and it is clearly within the power of the Commission to prohibit a payment provided in a tariff for such services. L. & P. Ry. Co. v. United States, 209 Fed. 244, 250.

(b) While the Act does not specify that the Commission should regulate every detail of railroad operation it is required by its terms to determine whether any rate or any regulation or practice affecting the transportation is just, reasonable, and nondiscriminatory, and among other things, to decide whether or not in specific cases carriers have complied with the requirements of the Act to furnish adequate facilities upon reasonable request. Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C. 179, 189.

II. CARRIER'S DUTY TO FURNISH OR PERMIT.

§2. In General.

See Through Routes and Joint Rates, VII.

(a) The privileges and advantages now enjoyed by a relatively small number of extensive industrial establishments must either be held to be an unlawful concession to them by the carriers, or, if lawful, the principles upon which they may be justified must be ascertained and clearly defined, so that like privileges and advantages may be claimed by all industrial establishments served, whether large or small. Industrial Railways Case, 29 I. C. C., 212, 217.

(b) It is incumbent on carriers to provide adequate station and warehouse facilities for the expeditious handling and delivery of freight transported by them; and their plain duty to so improve their terminals as to enable them under new methods of delivery to comply with all reasonable demands of existing traffic conditions. Merchants' & Manufacturers' Assn. v. B. & O. R. R. Co., 30 I. C. C. 388, 393.

(c) It is the duty of carriers to furnish facilities, under section 1. Lumber Rates Through Ohio River Crossings, 29 I. C. C. 38, 39.

(d) The Act does not require a carrier to hire any instrumentality for the performance of a transportation service. The right of a carrier itself to perform the full duties of transportation is clear. Grain Elevator Allowances at Kansas City, 34 I. C. C. 442, 446.

(e) For a trunk line carrier to offer its facilities by lease or trackage rights, to give an undue advantage to a single shipper, is unquestionably a devise such as is condemned by the Act. Second Industrial Railways Case, 34 I. C. C. 596, 607.

(f) In general, custom has largely

determined what is reasonable service. It has determined that it is the duty of a railway company to afford the shipper desiring its service a reasonable opportunity to deliver his freight for shipment, to transport the freight with reasonable dispatch and safety, and to place it in a reasonably accessible place for the consignee to receive. The service also includes the care of the freight, after the actual movement, for a time sufficient to afford the consignee a reasonable opportunity to remove it. For all of this service, the carrier is entitled to reasonable compensation. It is the practice of American railroads to fix their charge for the entire service thus described, in a single item, which is termed the freight rate. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 52.

(g) While it is the duty of carriers to foster commerce by rendering efficient transportation service, it is unlawful for them to foster it more at one place than at another; and they are under no obligation to foster commerce at the sacrifice of reasonable profits. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 53.

§2½. Bulkheads.

(a) Bulkheads used to divide the car into two bins, one at either end, and a free space from door to door between the bins. New York Shippers' Protective Association v. N. Y. C. & H. R. R. Co., 30 I. C. C. 437, 438.

§6. Dumping and Trimming.

(a) Refusal to absorb loading and trimming at Locust Point, Md., when for Buffalo, N. Y., found unreasonable. Dilkes & Co. v. B. & O. R. R. Co., Unrep. Op. A430.

(b) Complainant attacked the legality of the defendants' charge for dumping coal into boats from their piers in the harbors of Norfolk and Newport News, Va., in addition to the regular transportation rate applying to the port on business destined beyond the Virginia Capes. The defendants transport coal from points without the state of Virginia to the ports named for transshipment. At those ports large coal piers, equipped with numerous devices designed to expedite and economize the transshipment of coal have been provided by defendants. When the cars loaded with coal reach the port they are run into a classification yard, from which a yard engine shoves them up an incline on the pier. Upon reaching the top of the incline, called the "knuckle," brakes are applied to the cars to hold them in position and the engine returns to the yard. Laborers, usually hired by stevedores who work under contract with the carrier, then release the cars, which move slowly down the other side of the incline, over track scales, and toward the coal chutes. When the car reaches the chute it is stopped, the bottom of the car is opened, and the coal falls through the chute into the hatchway of the vessel. The physical discharge of the coal from the car into the vessel is termed "dumping." Leveling the coal in the hold of the vessel is called "trimming." Some vessels are so constructed that little leveling is necessary; in others, especially sailing schooners and other vessels of the older type, the coal is apt to pile up in the shape of a pyramid, necessitating more leveling. The complainant's vessels are so constructed that they can be tilted during loading, thus permitting a more even distribution of the coal. The complainant purchases coal f. o. b. tide, so that title to it does not vest in complainant until it is delivered into the hold of the vessel. The coal is billed from the mines to the agent of the shipper at the pier. The shippers usually undertake to pay the transportation charges. A holding that the transportation rate should include dumping would thus relieve complainant from payment of the dumping charges. In the past both dumping and trimming charges, when imposed by the carrier in addition to the rate to the port, have been paid by the complainant. HELD, when delivery must be made in a peculiar way the carrier is entitled to an extra charge therefor. The publication by defendants, in addition to the transportation rate, of a separate charge for dumping coal from defendants' piers into the complainant's vessels at the ports named is not unlawful. Complaint dismissed. New England Coal & Coke Co. v. Norfolk & Western Ry. Co. et al, 33 I. C. C. 276.

(c) There is nothing in the act which prohibits the separate publication of dumping charges. It is specifically provided in section 6 that the schedule shall "state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require," as well as "any rules or regulations which in any wise change, affect, or determine any part of the aggregate

of such aforesaid rates, fares and charges, or the value of the services rendered—." The plain intent of the whole section is that all matters which enter into or aid in determining the whole or any part of the charge imposed by the carrier for the services rendered shall be so published that they may be plainly and unmistakably ascertained by the public. The separate publication of charges of this kind not only makes possible a more accurate allocation of the carriers' revenue and expenditures, but removes the uncertainty sometimes occasioned by imposing a blanket charge for a number of services of different kinds. New England Coal & Coke Co. v. Norfolk & Western Ry. Co., 33 I. C. C. 276, 280.

§7. Back Haul.
See Back Haul.

(a) Back haul contrary to purpose of transit and should generally be permitted only to meet unusual situations. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 153.

§10. Loading, Unloading, Bracing, etc.
See Loading and Unloading.

(a) No greater free time allowed to remove traffic from freight shed furnished by carrier than for unloading from car. New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 606.

(b) At common law, a delivery of carload freight to a shipper having a private siding is made by shunting the car upon the switch, clear of the main tracks. Industrial Railways Case, 29 I. C. C., 212, 225.

(c) A rate that is reasonable for the team track and siding service is clearly less than reasonable when it includes the much more costly service over tracks leading to a multitude of loading and unloading points within an industrial plant. Industrial Railways Case, 29 I. C. C., 212, 236.

(d) Less-than-carload rates assessed on shipments of tobacco from Marion, N. J., to San Francisco, Cal. Carload rate with minimum weight plus charge for loading performed by employes of carriers should have been assessed. Reparation awarded. American Tobacco Co. v. P. R. R. Co., Unrep. Op. A160.

(e) Shipment consisting of ice machine and galvanized iron ice molds on five different cars, found to constitute one shipment and entitled to rate applicable to machinery. Frick Co. v. C. V. R. R. Co., Unrep. Op. A382.

§11½. Reshipping Rates.
See Infra, §15.

(a) The Commission considered the reasonableness of regulations requiring shippers of grain at St. Louis, Mo., to surrender expense bills covering inbound shipments to obtain benefit of reshipping rates to central freight association and trunk line territories. There were no joint through rates from local Missouri points to destinations indicated, and the through rate, made up of the interstate rate to St. Louis, plus the rate beyond, was higher than the interstate rate to St. Louis plus the rate beyond. In order to insure application of the interstate rate where grain was subsequently shipped out on the reshipping rate, carriers required unloading at St. Louis and the surrender of expense bills complained of, defendants maintaining that the reshipping rate was part of a through rate to which the shipper was entitled only where he had paid the part thereof applicable to the shipment into St. Louis. There was no commodity rate on the traffic in question; but while there was no class rate on grain to central freight association territory, there was to trunk line territory. HELD, that the regulation was reasonable on shipments to trunk line territory, as it is necessary to know the point of origin of the shipment to determine whether the reshipping commodity rate applying to shipments "from beyond" should be applied, or the local or flat class rate, but shipments to central freight association territory were entitled to move out on the reshipping rate regardless of point of origin or of rate on inbound shipment, as there was no other rate on which such shipments could move to that territory. Directed that case be re-opened and heard with Southwestern Missouri Millers Club and C. & A. R. R. Co., Docket No. 6662, on notice. Merchants Exchange of St. Louis v. B. & O. R. R. Co., 30 I. C. C. 700.

§12½. Special Services.
See Special Services.

(a) Wherever there is such a congestion of traffic that it is impossible to place a car exactly where the consignee wants it, the railway company simply cannot do it. What it is to do, as already held by the Board, is to put the car in

as convenient a place as possible for the consignee. There is no suggestion that cars are to be kept congesting yards until such time as they can be placed at the exact spot where the consignee wants them. That would be unreasonable and might be impossible. The railway company's duty is, on getting its notice within the twenty-four hour period, to spot the car as quickly and with as little inconvenience as possible under the particular circumstances which arise from day to day. (Can. Ry. Comm., 1914.) Complaint of Dartnell, Limited. File No. 1700.44.

(b) Shippers frequently nail their bulkheads and false floors to the car. Carriers should provide dead pieces into which nails may be driven without injury to the car. New York Shippers' Protective Association v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 442.

§14½. Store Door Delivery.

(a) To the extent of the reasonable cost of store door delivery, the burden is upon the carriers to justify withdrawal of the service and the consequent increase of cost to the shipper. Merchants' & Manufacturers' Assn. v. B. & O. R. R. C., 30 I. C. C. 388, 389.

(b) Complainant attacked the class rates from defined eastern and New England territory to Baltimore, Md., as unreasonable and discriminatory and asked reparation. The first class rates from Boston, Providence, New York and Philadelphia were 42, 42, 34 and 23c, respectively, for distances of 406, 379, 188 and 95 miles. Complainant contended that rates on the first three classes were unjust as a result of the elimination of store-door pick-up and delivery service at Baltimore, withdrawn by the carriers Sept. 1, 1913, as a result of the decision in Washington, D. C., Store-door Delivery, 27 I. C. C. 347. Store-door delivery had existed at Baltimore since 1867, the carriers paying from 4 to 4½c per 100 lbs. therefor to certain transfer companies, besides expense of clerk hire and station or platform work. The service related only to the first three classes moving from a restricted territory of origin; even from these many articles were excepted; and the privilege did not extend to stores outside restricted limits. The question of discontinuing the practice, owing to the increased expenses in connection with it, due to increased height of buildings, had been considered by the carriers for a number of years. Store-door delivery enabled them to handle freight with a minimum of storage facilities. Its withdrawal consequently resulted in congestion; but this had been abated through enlargement of terminal facilities, and the habituating of shippers to the new regime. The change had resulted in additional expense to carriers through the necessity of giving notice of arrival of freight. Existing rates on the first three classes were not established under an adjustment whereby costs of the store-door service were added to transportation rates; as is indicated by the rates to Baltimore from points whose traffic was not accorded store-door delivery. For instance, the spread between the rates for the third and fourth classes from Buffalo, N. Y., Pittsburgh and Tyrone, Pa., and Cumberland, Md., was in each case 9c; whereas the spread between the same classes from Boston and Providence was 8c; from New York, 5c, and from Philadelphia, 6c. A comparison of rates in eastern territory showed a New York-Baltimore scale of 34c to 12c for a distance of 177 miles, and a Philadelphia-Baltimore scale of 23 to 9c for a distance of 95 miles, as compared with scales of 30 to 13 or 11c for average distances of 200 miles, and other scales of 22 to 9c, 23 to 9½c, 26 to 10c, and 28 to 10.5c for distances ranging from 71 to 116 miles. HELD, that defendants are warranted in their discontinuance of the free store-door delivery service, and that in other respects the rates complained of are not shown to be unreasonable or discriminatory. Complaint dismissed. Merchants' & Manufacturers' Assn. v. B. & O. R. R. Co., 30 I. C. C. 388.

(c) Store-door delivery first inaugurated to relieve congested condition of station. Chamber of Commerce of Washington v. B. & O. R. R. Co., 30 I. C. C. 446, 448; Judd & Deweiler, Inc., v. B. & O. R. R. Co., 30 I. C. C. 455, 456.

§14¾. Tailboard Delivery.

(a) Because a carrier at one point, because of peculiar conditions, performs a form of tailboard delivery (whereby less than carload shipments for certain consignees are placed at certain locations on station platforms, etc.) it does not follow that the Commission may impose this duty upon carriers at other points. Phila. Team Owners' Pro. Asso. v. Ry. Co., 32 I. C. C. 387, 392.

(b) Complainants, team owners in Philadelphia, New York and Cincinnati, attacked the rules and regulations of the carriers at these points with respect to the receipt and delivery of less-than-carload package freight, in that (1) they do not separate, segregate or make conveniently accessible freight received for local delivery. (2) They do not maintain stations with sufficient floor space, so that congestion and delays result. (3) That shipments are piled in masses, with marks frequently covered or turned down, and without aisles of sufficient width to permit the passage of a hand truck. (4) That reasonable facilities are not provided for the loading and unloading of less-than-carload freight. (5) That the defendants segregate, or place in designated locations on the station platforms or floors, merchandise consigned to certain teamsters and consignees, while refusing to perform this service for others. (6) That complainants are discriminated against in that greater assistance in removing freight is rendered by employes of some of the defendants at other points. (7) That the delays resulting from the alleged confusion at freight stations subject the complainants to undue and unreasonable expense and retard the movement of freight across the platforms. The relief prayed for is an order directing the defendants to place in effect a rule providing for a so-called tailboard delivery and a tailboard receipt of less-than-carload freight. By this is meant that the carriers shall make the goods readily accessible, either by permitting complainants to back their trucks to the place at the station where the goods have been placed, or, if the arrangement of the platform or pier renders that impracticable, that defendants, by their own employes, shall truck the goods to the tailboards of the wagons. By tailboard receipt is meant that defendants shall promptly receive outgoing merchandise at the tailboards of the wagons, without requiring complainants to remove the goods previously unloaded by other shippers at that point, and that complainants shall not be required to unload their shipments at more than one location upon the station platform. A proceeding entitled Gabrylewitz v. P. R. R. Co., involving practically the same issues, was brought before the Pennsylvania State Railroad Commission in October, 1912, its docket 965. The Commission, after making an investigation and inspecting the premises, dismissed the complaint, holding in substance that tailboard delivery would not expedite materially, if at all, the delivery of freight. Without discussion at length, it may be assumed that the methods and practices now in vogue with the carriers for the delivery of L. C. L. freight are those which, in the judgment of the operating officials, are best adapted to meet the conditions at each station and to permit the handling of freight with rapidity and justifiable economy. While details differ, the methods generally practiced are as follows: (1) All freight in a given car is placed in one section of the terminal. (2) It is separated by commodities or (3) it is arranged as to consignees alphabetically. Whatever the arrangement, the station records show definitely the location of every shipment on the station floor. When the drayman calls he is advised, and he places his dray at the most convenient place for handling the goods. The feature of delivery most objected to is the intermingling of shipments of different consignees. Defendants assert, however, that their employees have instructions to assist as far as possible in locating a consignee's goods. It appeared the carriers at all times are ready and willing to render reasonable assistance to consignees. It is true that at Cleveland, Buffalo and a few other places a modified form of tailboard delivery is maintained, this being brought about by peculiar local conditions. But even where this system is provided, the teamsters are not excluded from the platforms, nor do the majority of them take advantage of it. It is acknowledged of record that the teamsters of one city are not in competition with those of another, and it does not follow that because a form of tailboard delivery is maintained at a few places under peculiar and special conditions, an order would be justified imposing the same duty on carriers at other places. Complainants contend that they are discriminated against in that all freight consigned to certain firms, or in the car of certain teamsters, is segregated and placed in one location, where it may be readily obtained, whereas freight consigned to other persons or firms is not so segregated. Defendants state that some consignees receive freight in such volumes that it is impracticable to spread it out over the station floors. There is no discrimination in this practice, however, as it is open to all who can and will observe the regulations as to volume of traffic and prompt removal of the goods.

In the judgment of the Commission this is a reasonable practice, resulting in advantage to the defendants in efficiency of station operation and also to the general public. The complaints respecting defendants' methods of receiving outbound shipments refer particularly to the so-called peddling system, meaning, according to counsel, the distribution from door to door and from pile to pile at the same station, merchandise intended for different consignees along the same route. This allegation lacks force. Outbound freight is dispatched on trains operating on regular schedule, a great part of it being delivered late in the afternoon; and the plan of partial segregation has been found necessary, in order to expedite the forwarding of freight on the day it is received. Upon all the facts, it is HELD, that the methods which have been adopted by defendants for the receipt and delivery of L. C. L. freight are reasonable and nondiscriminatory, and have been formulated through experience gained in the operation of each station. It would appear that teamsters and shippers themselves are responsible for much of the delay, in that hauling is not done more uniformly throughout the day. The practice of hauling inbound freight in the early morning and outbound freight in the afternoon results in congestion that could be avoided. It is sufficient to call attention to the fact that the complainants, acting as draymen or teamsters, have no interest in the goods transported nor in the payment of the transportation charges. Complaint dismissed. Phila. Team Owners' Protective Ass'n v. Ry. Co., 32 I. C. C. 387.

§15. Transit.

See Additional Charges, (q); Basing Points and Lines, §2 (hh); Cars and Car Supply, §11; Classification, §7 (l); Concentrating Rates and Privileges, (d); Crimes, §10 (a), §15 (a); Reparation, §8 (ll), §16 (tt); Routing and Misrouting, §5½ (c), §7 (g), (m); Substitution of Tonnage; Tariffs, §14 (b); Through Routes and Joint Rates, §15 (xx), §18, §22 (a), (u); Weights and Weighing, §2½ (o).

(a) On grain, grain products, and hay shipped to Nashville by rail from or through Ohio or Mississippi River crossing points, such as Louisville, Evansville, Kickman. Paducah, Cairo, etc., the L. & N. and N. C. & St. L. R. Rs. charge the full local freight rate from said crossing points to Nashville. These shipments may then be stopped at Nashville for a period not exceeding six months, during which time they may be rebilled or reshipped to destination in Southeastern and Carolina territory; and on such reshipments so rebilled the freight charges into and out of Nashville are readjusted so that the total transportation charge on any one shipment from any given Ohio or Mississippi River crossing via Nashville, to any given destination in said territory, shall exactly correspond with the transportation charge legally assessable on that shipment had it been rebilled and moved through from its point of origin at the said Ohio or Mississippi River crossing points to its final destination without having been stopped in transit at Nashville. Litigation arose concerning the situation, as follows: In 1908 certain Georgia grain dealers complained to the Interstate Commerce Commission of various traffic practices at Nashville; after taking voluminous proof, the Commission on June 24, 1909, held the reshipping privilege illegal and ordered it stopped. The Commission on its own motion postponed the effective date of the order so that it might institute a country-wide investigation of the practices involved; and on May 3, 1910, the Commission, after a hearing at which about 150 shippers and carriers were represented by counsel, reported that its former order abolishing the reshipping privilege in toto was too strict, and remitted the matter to the carriers and shippers to frame regulations that would prevent any rebating under the privilege (18 Inter. Com. Rep. 280), and, pursuant thereto, new and satisfactory regulations were adopted to safeguard the reshipping privilege (21 Inter. Com. Rep. 183, 188). The previous order of June 24, 1909, which had abolished the reshipping privilege at Nashville, was vacated and the Commission thereafter again considered the controversy between the grain dealers of Georgia and the Nashville dealers and carriers. On June 9, 1911, the Commission delivered a supplemental report, holding that the action of the carriers in granting the reshipping privilege to Nashville, while refusing it to Atlanta, etc., was an undue and unreasonable preference to Nashville, in violation of §3 of the Interstate Commerce Act (21 Inters. Com. Rep. 186). The Commission entered an order in accordance therewith.

The Nashville Board of Trade, the L. & N. R. R. Co. and the N. C. & St. L. R. R. Co. thereupon sued in the commerce court to enjoin the enforcement of the order; the two suits were consolidated. The court, finding that there was no conflicting or disputed evidence concerning the origin and character of the reshipping privilege, concluded that whether such privilege was an undue preference was not a matter of fact, but a question of law, upon which it was its duty to reach an independent conclusion. The court, therefore, among other considerations, because the privilege was long standing and was justified by water competition at Nashville, declared it to be not unlawful and not preferential. A peremptory injunction was allowed, restraining the enforcement of the order of the Commission. And the correctness of this action is the question here for decision, 197 Fed. 58. HELD, that the commerce court exceeded its authority in substituting its judgment for that of the Commission and the injunction must be dissolved. Judgment of the Commerce Court reversed. U. S. v. L. & N. R. R. Co., 35 Sup. Ct. Rep. 113, 114; 235 U. S. 314; 236 U. S. 318; 59 L. Ed.

(b) The essential object of the usual milling-in-transit privilege is to enable shippers to employ a method of transit which, but for the privilege, would subject the material to local rates instead of entitling it to an ultimate through rate. The through rate is applied later upon the theory and the condition that stoppage at the transit point was for some legitimate treatment of the material, and that the continuation of the transit desired is of the same material, its product or equivalent at a through rate to destination. Thus the object at last is to escape local rates and secure a through rate; indeed, apart from this object a milling-in-transit privilege would have no reason to exist. The privilege, of course, enters into the cost of transportation, and so in effect is part of the contract for through shipment; this is ordinarily covered by the rate; and such is the theory upon which the privilege is required to be specified in the published tariff. Lewis, Leonhardt & Co. v. Southern Ry. Co., 217 Fed. 321, 324.

(c) There can be no difference at bottom between the right directly to change or withdraw a rate and the right indirectly to do the same thing through alteration or withdrawal of a milling transit privilege. Lewis, Leonhardt & Co. v. Southern Ry. Co., 217 Fed. 321, 325.

(d) Plaintiffs had a contract for a milling-in-transit privilege on feed at Knoxville, Tenn. Under this arrangement plaintiffs paid the inbound local rates on the articles entering into the product and the outbound proportional rates on the product itself, and under purely arbitrary calculations were afterwards reimbursed, in the form of refunds, upon the hypothesis that the ingredients were all transit articles. like the oats and corn, and so entitled when milled to the transit rate. Judge Sanford found that the settlements were made by "calculating the milling in transit refund on one-half of the ingredients from their points of origin and then doubling the amount of this refund on the theory that it represents approximately the milling-in-transit refund on the other half of the ingredients from their points of origin." The Court of Appeals understood this to mean and the practical construction of the contract to have been, that such calculations were made with respect to the local rates on inbound shipments of oats and corn and the proportional rates on outbound shipments of product. This would seem to have been also in accord with the practica' construction placed by the parties on the schedule (or circulars, as they are called in the record) which were filed with the Interstate Commerce Commission. It must be said that these circulars are ambiguous and difficult to unde stand, which augments the binding force of the interpretation placed on them by the parties in their performance of the contract. HELD, when the volume of plaintiffs' business is considered as indicated by the evidence, and the excess of the inbound local rates on molasses and rice chaff over the inbound local rate on oats and corn, it is manifest that the method inured to the substantial advantage of the plaintiffs; and it is equally plain that plaintiffs received in every settlement, under guise of milling-in-transit refunds, distinct portions of the inbound local rates which they had previously paid on at least 46 per cent of the non-transit tonnage of their output, and so obtained rates thereon less than the applicable published tariffs; and the statutes are too plain and the decisions too numerous and clear to justify elaboration in showing that every

such refund was in material part a rebate. It follows that filing the circulars with the Interstate Commerce Commission respecting milling-in-transit privilege was futile. The railroad company had no power to grant and the plaintif no right to receive such a privilege. Lewis, Leonhardt & Co. v. Southern Ry. 217 Fed. 321.

(e) Before a lower transit tariff can be applied to a shipment through a transit point, it must appear that there is some relation between the inbound and outbound shipments; since an inbound shipment consumed or reconsigned at the transit point cannot be made the basis of transit shipment. G. R. & I. Ry. Co. v. United States, 212 Fed. 577, 585.

(f) Where transit rates are wrongfully applied to shipments to the knowledge of certain agents of a carrier, the carrier is chargeable with their knowledge and punishable for rebating. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 593.

(g) An application of transit rates to shipments consumed or reconsigned at the transit point, constitutes rebating. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 591.

(h) Transit involves rate difficulties peculiarly its own. These difficulties and the resulting confusion, obscure the publication of rates and deprive tariffs of one of their most essential qualities, clearness. Considerations of this nature should be thoroughly analyzed and weighed before transit is extended into new fields. Fabrication-in-Transit Charges, 29 I. C. C. 70, 76.

(i) Ordinarily transit can only be accorded products which move at the same or nearly the same rates as the material from which they were made. It is reasonable to withold transit from a product essentially different from the raw material. Fabrication-in-Transit Charges, 29 I. C. C. 70, 76.

(j) The fundamental basis and chief justification of transit is the equalization of rates and the prevention of discrimination between different sections of the country. Fabrication-in-Transit Charges, 29 I. C. C. 70, 82.

(k) Transit is a practice or regulation included within the provisions of section 15, over which the Commission has jurisdiction. Fabrication-in-Transit Charges, 29 I. C. C. 70, 78.

(l) Complainants, engaged in the manufacture of lumber and barrel material at Monroe, Ruston and Sibley, La., protested against the rates and transit privileges accorded them on logs and rough material drawn from nearby local points on defendant's line, compared with rates and privileges accorded competitors at Vicksburg and Jackson, Miss., as unjustly discriminatory. The line of the V. S. & P. Ry. extends from Shreveport, La., eastward to Vicksburg, Miss., where it connects with the A. & V. Ry., both roads being under common management, but separately operated. Via these lines, Monroe, Ruston and Sibley, junction points on the V. S. & P. Ry., are, respectively, 96, 65 and 27 miles east from Shreveport, 76, 107 and 145 miles west from Vicksburg, and 120, 151 and 189 miles west from Jackson. It appeared that defendant's rules permitted Vicksburg competitors to pay a proportional rate of 6c per 100 lbs. on logs shipped in, and the balance of the through rate from the original point of shipment on the manufactured product when shipped out; while Jackson competitors were required to pay the full local rate on the rough material in, which, upon reshipment of the finished product, was reduced to a proportional rate of 6c, while the balance of the through rate from original point of shipment was applied on the manufactured products. In both cases the switching charges were absorbed in the through rate. Complainants were required to pay full local rates on inbound rough material, subject to reduction on reshipment, and $3 switching charges on each inbound car. The full local rates were based on mileage, and ranged from 4c to 8c per 100 lbs.; while the reduced or reshipping rates, applicable only when the manufactured product was shipped via defendant's line, ranged from 1¾c to 5½c per 100 lbs. The burden of the switching charge was enhanced by the fact that it applied on all inbound cars, and complainants being given the benefit of the reshipping rates on inbound tonnage equal to three times the weight of the outbound product, it followed that a switching charge of $3 on each of three inbound cars, aggregating $9, would ordinarily be charged against a single outbound shipment. On the other hand, complainants had the advantage of a back-haul privilege, while their competitors could ship only from west to east; they had 12 months in which to ship their manufactured product and claim the benefit of reductions on the inhaul sale, as

against 6 months and 4 months in case of their competitors; complainant's average inbound haul was but 25 to 30 miles, the rate on which was but 2½c, while their Jackson competitor could draw material from Holly Ridge, La., only, a distance of 91 miles, the net rate being 6c, at the ratio of 2 lbs. for every pound of manufactured product out; rates to complainant applied on both lumber and barrel material, while their competitors were limited to lumber and barrel material, respectively; and complainants were accorded a much larger number of points of destination to which they might ship, their competitors being limited to Ohio River crossings and beyond, while they had the privilege of shipping to all territory east of the Mississippi River, including Canada. HELD, that the existing rates were not discriminatory and that complainants were at a disadvantage only in the matter of the switching charges. Ordered, that defendant cease from collecting switching charges at the Louisiana points in excess of such charges as might be collected at Vicksburg or Jackson. J. A. Adams & Sons Co. v. V. S. & P. Ry. Co., 29 I. C. C. 52.

(m) The Commission considered proposed increases in fabrication-in-transit charges on structural steel and changes in the rules governing transit on a large number of railroads. A distinction exsists between the manufacture of structural steel and "fabrication" as the subsequent process by which it is adapted for use in bridges, buildings, etc. The manufacturing process embraces the conversion of the ore into steel, forming of the steel into billets, and transforming the billets into steel plates, bars, angles, channels, beams, tees, etc. The operations by which these various forms of structural steel are cut to the required length, punched, drilled, and riveted together, are termed "fabrication.' Fabricated and unfabricated steel move at the same rate. This common rating places on a parity all fabricators located at original point of manufacture, at rate-breaking points, and at points of consumption. Under the fabrication-in-transit provisions under consideration, a fabrication plant located at an intermediate point might receive shipments from the mills, fabricate and forward at the balance of the through rate, plus a charge for stoppage-in-transit. If fabrication-in-transit arrangements were abrogated in Central Freight Association Territory, fabricating plants in Pittsburgh and Chicago districts would remain on practically an equality with each other, except that Chicago would retain its advantage of 20c per ton where the rates break there, due to the charge of 1c per 100 lbs. on movement from the roller mills to the fabricating plants in the Pittsburgh district. This parity would extend to St. Louis, Cincinnati, and plants in Eastern and Western Trunk Line Territory. Thus the rate from Pittsburgh to Toledo and from Toledo to Chicago is in each case 13c. Under present arrangements Toledo fabricators pay 19.5c, being the through rate of 18c from Pittsburgh to Chicago, plus 1.5c fabrication-in-transit charge; but with the privilege withdrawn they would have to pay the sum of the two locals, 26c. The rate from Chicago to St. Paul, Minn., is 14c; and in the movement from Toledo the total cnarge would be 40c with transit privilege abrogated, as against 33c under present arrangements. For transportation to St. Paul the fabricating plant at Rankin, Pa., pays 33c, 1c for the movement, from the roller mills plus the through Pittsburgh rate. Chicago district plants, however, pay only 32c, 18c Pittsburgh to Chicago, and 14c Chicago to St. Paul. Thus withdrawal of the privilege at Toledo would place that plant at a disadvantage of $1.40 per ton as compared with Rankin and $1.60 per ton as compared with Chicago. Transit charges: The changes incolved certain interior Central Freight Ass'n points, at all of which the fabrication-in-transit charge was 1½c per 100 lbs., which it was proposed to raise to 2½c. Respondents urged that the existing rate did not cover the cost of industrial switching at the points involved, which with a reasonable profit justified an imposition of 2½c. Switching necessitated by transit involved four movements: (1) Movement of loaded car into fabricating plant; (2) Movement of empty car out; (3) Movement of empty car in for fabricated material; (4) Movement of loaded car out. The cost figures at Canton yards for this service per car, and for taxes, interest, and depreciation were $6.906, which, with $2.82½ for five days' loss of use of car made an entire cost to the carrier of $9.73. But an average of 25 per cent of the cars unloaded at the fabricating plants were reloaded without extra switching. Under existing rates the plant at Rankin, Pa., has an advantage of 0.5c and those in Chicago district

of 1.5c per 100 lbs., over the interior fabricator, which advantage the proposed increase would augment by 1c per 100 lbs., and this though the total number of switching movements in the entire haul from rolling mills to ultimate destination was in every instance the same. Points in Western Trunk Line Territory and rate breaking points generally would in great measure continue to enjoy transit at 1½c, while in Eastern Trunk Line Territory the rates ranged as low as 1c. From Pittsburgh to Chicago, the average car revenue of the Pennsylvania lines on all commodities is $62.83, on structural steel $109.78; the ton-mile rate on all commodities 5.71 mills, on structural steel 8.33 mills. HELD, that rate comparisons show that an increase to 2½c per 100 lbs. for fabrication-in-transit cannot be permitted if substantial rate equality at fabricating points is to be maintained. It is suggested that the additional expense incident to the service, if not adequately covered, be reflected in the general level of rates on structural steel. Tariffs under suspension cancelled. RULES AND REGULATIONS GOVERNING FABRICATION-IN-TRANSIT. Protestants attacked the rules and regulations proposed as unreasonable, discriminatory, and indefinite and uncertain, in violation of Rule 10 (a) of Tariff Circular 18-A. The attack centered on the request that respondents (1) extend the list of iron and steel articles which may enter into the fabricated product; (2) extend the time limit of transit; and, (3) permit fabricators, under proper cancellation of inbound billing, to substitute steel originating on different lines or coming from different territories. Both existing and proposed tariffs showed great want of uniformity in such matters. Some included by general provisions many articles not specifically enumerated, while others confined the articles which might be fabricated to those specifically enumerated. The time limit varied from 4 to 6 and 12 months. Some provided that while identity of carloads need not be preserved, a substitution impairing the identity of the through rate was not permissible; while another added that tonnage originating in one territory might not be substituted for a like tonnage from another territory. HELD, that the list of articles in respondent's tariffs should be made uniform and should include all articles necessary for the fabrication of sections of bridges and buildings, but the list need not be extended beyond bridges and buildings. Respondents should change their transit rules and regulations, so as to specifically provide for substitution of material drawn from the lines of different carriers and different rate territories; provide for proper accounting and for cancellation of inbound shipping to cover outbound shipments, local consumption, waste or shrinkage; frequent checking of fabricated and unfabricated material and billing on hand; and cancellation of excess billing. Fabrication-in-Transit Charges, 29 I. C. C. 70.

(n) Under "transit" grain may be stopped and pass into the possession of the owner for cleaning, grading, mixing, milling, or other commercial process, and then go forward to a new destination at the balance of the through rate from the point from which it was first shipped, with, at some points, a small charge for the services incidental to the delivery at the transit point. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 378.

(o) Transit is less desirable than the breaking of rates. At rate-breaking points the dealer or miller may ship by any line to any market regardless of the route of the inbound movement, while at transit points the commodity must go to the markets reached by the extension of the route of the inbound movement. In the endeavor to prevent substitution of local grain for transit grain, the carriers also require accounts of stock in hand and points from which procured, all of which is costly and annoying to shippers. At rate-breaking points this burden of policing is avoided, because no substitution at such points can operate to defeat tariff rates. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 278.

(p) It is the duty of shippers to aid carriers in their efforts properly and effectually to police transit privileges. Gadow v. C. St. P. M. & O. Ry. Co., 29 I. C. C. 457, 458.

(q) Refund denied on unused grain "transits" shipped in under former practice of paying full rate to final destination and shipping out manufactured and by-products. Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364.

(r) Until May 3, 1910, it was the almost universal practice of carriers to

check the shipment out against the shipment in, without inquiring as to the character of the product shipped out. Commission held that it was improper. 28 I. C. C. 364, 365.

(s) Checking car against car cannot properly be done, since it gives to the less-than-carload shipment of the corn in, and in some cases of the product, out, the carload rate. Clinton Corn Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 370.

(sa) Ordinarily where milling in transit is permitted, the full local rate is collected when the shipment moves into the milling point. When product moves to final destination, to which through rate is in effect, charges are so adjusted plus milling in transit penalty. Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 368.

(sb) Mills in Charleston have no milling-in-transit privilege, and can only place their products in the common territory between Wilmington and Charleston by the payment of local rates. Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 385.

(sc) Privilege of concentrating broom corn at Wichita, Kan., was for a time withdrawn, then restored. Charges exacted during the interim found unreasonable and reparation awarded. American Warehouse Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A103.

(sd) Complaint as to rules of defendants on transit privileges on grain and grain products dismissed without prejudice, no action being necessary in view of Transit case, 26 I. C. C. 204. Missouri Transit Committee v. A. T. & S. F. Ry. Co., Unrep. Op. A104.

(t) Through rate with transit privilege at East St. Louis found to have been applicable on shipments of corn from points in Illinois to Louisville, Ky., instead of combination rate. Reparation awarded. Security Warehouse & Elevator Co. v. C. & A. R. R. Co., Unrep. Op. A221.

(u) Instructions given to forward shipment via certain point at which lumber could be dressed. Combination rate applicable. There was an available route between same points carrying joint rate. with privilege of dressing. HELD, not misrouting, routing instructions having been followed. Hettler Lumber Co. v. M. C. R. R. Co., Unrep. Op. A302.

(v) Mixed shipment of transit and non-transit grain from Chicago, Ill., to Harbor Beach, Mich., found entitled to carload rate from transit station to destination. Huron Milling Co. v. P. M. R. R. Co., Unrep. Op. A396.

(w) Complainants, companies engaged in buying, selling, exporting, importing and storing grain, sought an order directing the S. P. Co. to establish a storage-in-transit privilege at El Centro, Cal. Complainants handled about 75 per cent of the grain raised in northern Mexico just south of the California line. This grain moved at the local rate via the I. C. Ry. Co. to Calexico, Cal., on the international line; thence via the S. P. Ry. to Los Angeles and its port, San Pedro, passing through El Centro, 9 miles north of Calexico, 213 miles east of Los Angeles, Cal., and 235 miles east of San Pedro. This Mexican grain was exported in large quantities from San Pedro, being removed from Mexico as soon as harvested, owing to the unsettled condition of the country, and held in bond at San Pedro until harvested; that portion not exported being hauled back to Los Angeles and sold there. To obviate the expense of the back haul, complainants built and bonded a public warehouse at El Centro, thus involving themselves in the payment of local rates to and from El Centro, instead of through rates from Calexico. Rates per ton from Calexico to El Centro, Los Angeles and San Pedro were, respectively, 85c, $3.60 and $4.10; from El Centro to Los Angeles and San Pedro, respectively, $3.10 and $4.00, and from San Pedro to Los Angeles, 60c. There were numerous grain-storage warehouses on the S. P. company's line, none of which enjoyed storage-in-transit privileges. The privilege was sought by complainants only as to Mexican grain. Rates on which Mexican grain moves to San Pedro break at Calexico, and this rate adjustment existed and was known to petitioners when the storehouse was built at El Centro. HELD, that inability of complainants to handle Mexican grain with safety by storing it near the harvest field pending ultimate consignment, does not entitle them to relief at the expense of the carriers, or a privilege not accorded competitors. Petition dismissed. Newmark Grain Co. v. Southern Pacific Co., 30 I. C. C. 431.

(x) Complainant attacked the charges imposed on certain shipments of hay, in carloads, from Pierreville, Que., and

other northeastern points, via St. Albans, Vt., to New York, as exorbitant. Complainant operated a hay warehouse at St. Albans, to which hay was shipped from the north and west, complainant paying the local rate, but by paying a reconsignment charge of $2 per car had the privilege of shipping out an equal weight of hay, whether it had been unloaded or not, at the balance of the through rate. On the carloads involved there was no through rate, the lowest combination being sometimes on Iberville, Que., and sometimes on Norwich, Conn., and complainant claimed the benefit of the lowest combination. By specific direction of complainant all shipments were billed locally to St. Albans and billed out again. A small amount of hay was purchased locally at St. Albans and delivered by team. Outbound cars were checked against inbound cars, car for car, irrespective of weight, but credits had to be used within a given time limit. Complainant, desiring to reconsign, was required to write "own billing" on the bill of lading, while the term "new billing," by agreement, signified that the car originated at that point. The bills of lading covering the cars in controversy bore the notation "new billing." The inbound rate of 18c into St. Albans applied as a blanket from St. Albans to Norwich, 250 miles distant. Pierreville, Que., 132 miles from St. Albans, taken as a typical point of origin, is on the Q. M. & S. R. R., 90 miles from Iberville, where it joins the C. V. Ry. The former line has practically no traffic except hay, and the cars in which hay is brought are invariably returned empty. Hay carloads weigh about 20,000 lbs., and the carriers receive for hauling an empty car one way and a loaded car the other about $36. HELD, that where the option of a transit privilege exists, the duty rests primarily on the shipper who elects to qualify for the enjoyment of the same to make clear affirmatively to the carrier the shipper's right thereto and intention and desire to avail himself thereof; failing which, the carrier, especially when following the shipper's written instructions, may fairly assume that the shipment is intended to be made without the benefit of transit privilege. Complaint dismissed. American Hay Co. v. C. V. Ry. Co., 30 I. C. C. 562.

(y) Denial of free switching in connection with transit privilege at Monroe and other Louisiana points while granting such privilege at Vicksburg, Miss., subjects shippers at the former points to undue prejudice. Adams & Sons Co. v. V. S. & P. Ry. Co., 29 I. C. C. 52.

(z) Transit involves rate difficulties peculiarly its own. These difficulties and the confusion which frequently results therefrom obscure the publication of rates and deprive the tariffs of one of their most essential qualities, namely, clearness. Intricacies of this nature should be most thoroughly analyzed and weighed before transit is extended into new fields. To deal with transit as an established service in a limited field is one thing, and to follow a policy of its indefinite extension is another. Fabrication-in-transit Charges, 29 I. C. C. 70, 76.

(aa) Additional expense incident to transit service may be reflected in the general level of rates on the article which enjoys the service. Fabrication-in-transit Charges, 29 I. C. C. 70. 82.

(bb) No increase-in-transit charges permitted where inequality would result. Fabrication-in-transit Charges, 29 I. C. C. 70, 80.

(cc) Provision should be made for checking of unfabricated and fabricated material with billing on hand. Fabrication-in-transit Charges, 29 I. C. C. 70, 89.

(dd) Provision should be made for cancellation of inbound billing to cover outbound shipments, local consumption, waste or shrinkage. Fabrication-in-transit Charges, 29 I. C. C. 70, 89.

(ee) The fundamental basis and chief justification of transit are the equalization of rates and the prevention of discriminations. Fabrication-in-transit Charges, 29 I. C. C. 70, 82.

(ff) Transit is a practice or regulation included within section 15, over which the Commission has jurisdiction. Fabrication-in-transit Charges, 29 I. C. C. 70, 78.

(gg) Transit privileges may be productive of much good. Fabrication-in-transit Charges, 29 I. C. C. 70, 76.

(hh) That money has been invested in an industry in reliance upon the continuance of transit privileges argues

for a maintenance of such privilege. Fabrication-in-transit Charges, 29 I. C. C. 70, 77.

(ii) That a transit privilege tends to equalize rates of the interior fabricator with those of plants located at rate-breaking points argues for a continuation of such privileges. Fabrication-in-transit Charges, 29 I. C. C. 70, 77.

(jj) The inbound carrier has a right to be concerned regarding the line movement of traffic from a transit point. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 379.

(kk) The freight bill should specify transit charges. In re Freight Bills, 29 I. C. C. 496, 497.

(ll) Whenever by any transit arrangement through rates are applied, they must be as of the date of the first movement of the shipment from the point of origin under such through rates. Washburn-Crosby Milling Co. v. B. & O. S. W. R. R. Co., Unrep. Op. A480.

(mm) The fact that a shipper has been misled into believing that he was entitled to milling-in-transit at a certain point by the carrier's local representative, affords no ground for reparation. Atlanta Milling Co. v. L. & N. R. R. Co., 31 I. C. C. 485, 487.

(nn) The outbound carrier is a necessary party to a suit for reparation based upon failure of the originating carrier to accord transit privileges. Atlanta Milling Co. v. L. & N. R. R. Co., 31 I. C. C. 485, 489.

(oo) Complainant attacked the failure of defendant to accord transit privileges on grain forwarded from Cincinnati, Ohio, milled at Atlanta, Ga., and the product reshipped to points in Carolina and Georgia territory, as discriminatory, such privileges being accorded at Paris, Lexington and Winchester, Ky. Before making shipments complainant had arranged with local representatives of defendant for milling-in-transit provileges on grain destined to Atlanta and Carolina territory; but defendant's circular provided for such privilege only where the product was to be forwarded to points in "Atlanta territory," while a second circular expressly excepted Carolina territory from such territory. Milling-in-transit at Atlanta necessitated back-hauling the product without revenue from Atlanta to Jellico, whereas no back haul was required on grain milled at Lexington or Paris. HELD, that the fact that complainant had been misled into believing that it was entitled to milling-in-transit at Atlanta by defendant's representative afforded no ground for repaation. Complaint dismissed. Atlanta Milling Co. v. L. & N. R. R. Co., 31 I. C. C. 485.

(pp) The theory of transit is service at some point between points of origin and destination of traffic, and in the direction of the movement to the point of final destination. A back haul is contrary to the purpose of transit, and should generally be permitted only to meet unuual situations, and when to do so does not result in unjust discrimination or other violations of law. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 153.

(qq) By a milling-in-transit arrangement a miller at an intermediate point is enabled to ship out the manufactured product of the grain practically on basis of the through rate from point of origin to final destination. It is a thing of value to the shipper, involving additional service on the part of the carrier for which a reasonable charge may properly be made. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 151.

(rr) The practice of milling in transit and that of stoppage in transit of grain for the purpose of elevation, cleaning, clipping, storage, etc., are the outgrowth of entirely dissimilar circumstances and conditions, and the practice as to charges for one service is not controlling in respect to the other. The grain dealer is merely engaged in handling the raw material, while the miller mills it and ships out the product. They are no doubt in competition in the purchase of grain, but they are not in competition in so far as the manufacture and shipment of the product is concerned. While substantially the same service may be performed for both, in the one case the shipment to and from the transit point consists of grain, in the other of grain to the milling point and the manufactured product beyond. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 151.

(ss) Complainant assailed defendant's milling-in-transit charge of ½c per 100

lbs. and its charges for out-of-line and back-haul movements of grain to the milling point, in connection with shipments milled in transit, as unreasonable and discriminatory. It appeared that at various points defendant permitted the stoppage in transit of grain free of charge, for the purpose of elevation, cleaning, clipping, storage, etc. On out-of-line and back-haul movements, charges to the milling or malting point were on a distance scale varying from 1½c for 25 miles or less to 5½c for from 175 to 250 miles; but on traffic to the east the back-haul charges applied only when the grain originated in a zone or group taking a lower rate basis than the milling point. Under the existing arrangement equality for all mills within a certain zone was accomplished. HELD, that neither the charges complained of nor the rules applicable in connection therewith were unreasonable or discriminatory. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150.

(tt) "Transit" implies that a commodity is first carried to a milling or manufacturing point, where a commercial process is performed, and the resulting product is moved on to other destinations. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 576.

(uu) The Commission has never condemned transit privileges when properly applied, but carriers have been criticized for going to unwarranted lengths in granting such privileges; and, except in unusual cases, the Commission has refused either to order the establishment of such privileges in the first case, or to order their restoration when once withdrawn by carriers. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 577.

(vv) In order that a tariff may make rules respecting the policing of transit grain applicable to grain transported under proposed proportional rates, it should provide the shipments "are governed by such rules and regulations" as are covered by publications of the company and participating carriers. Export Rates on Grain and Grain Products, 31 I. C. C. 617, 621.

(ww) Complainants attacked defendant's charge of 2c per 100 lbs. on lumber handled under transit arrangements at Asheville and other western North Carolina points as excessive, unreasonable and discriminatory; and attacked defendant's rules governing transit as impracticable and burdensome, and prayed for extension of destination territory, less rigorous rules, and reparation. The traffic involved originated on the lines of the S. Ry. in eastern Tennessee and western North Carolina. To meet like privileges accorded by the N. & W. Ry., the S. Ry. had extended transit privileges to 74 points on its system, the charge being in all cases 2c, expect at three points, where it was fixed at 1½c by order of the Commission. The privilege was limited as to destination to traffic to the Ohio and Mississippi rivers, for beyond, to Virginia cities, for beyond, and to the South Atlantic ports. **Transit Rules and Policing.** In 1913 defendant abrogated its rule permitting the interchange of (1) walnut, cherry and cedar, and (2) ash, chestnut, elm, oak and pine, at transit points, establishing in lieu thereof a "kind-for-kind" rule in connection with a "footage" and weight rule, applicable in all cases. Expense bills often lapsed, under these rules, through being for a different kind of wood than that contained in the outbound shipment. Credit slips were issued for expense bills down to a minimum of 1,000 lbs. Defendant required monthly reports of shippers, and daily reports where lumber was received, loaded out, disposed of locally, or billing was canceled; a report of the contents of each car, quantity inbound and subsequest disposition, was also provided for. The shipper was also required to make an indorsement on the bill of lading that the shipment was entitled to transit. **Reasonableness of the 2-Cent Charge.** Under the 2-cent charge, existing as to all points except three, where the charge had been made 1½c by order of the Commission, defendant allowed 48 hours' free time for unloading and 48 hours for reloading. A check of all cars into and out of the plants of eight complainants at Woodfin, Asheville, Biltmore, Azalea and Marion, N. C., during April, May and June, 1913, showed the average switch movements per transit car to be 2.92. Free time ran from 7 a. m. following placement of car, excluding Sundays, holidays and stormy days, and making no charge nor allowing credit for fractions of a day. But the per diem paid by one railroad to another was a fixed charge per day for all days that a car was on a foreign line. The

actual average detention was on inbound cars released empty, outbound cars placed empty, and inbound cars loaded out, 5.11, 3.70 and 8.55 days, respectively, including in each case the entire day of placement and the entire day upon which the cars were pulled out. Including the release day only, the average detention was approximately one-half day less. And excluding as well the entire day of placement, the average detention on combined inbound and outbound movement would be reduced to seven days. On an average lading of 42,500 lbs. the charge would be $8.50; the expense of switching and detention, $8.99; loss to the carrier, 49c. **Discrimination.** Complainants alleged that the 2-cent charge affected their ability to compete with transit users at Newport, Johnson City and Bristol. They drew lumber from the same producing section and disposed of their transit shipments in the same northeastern markets with their Tennessee competitors, but asked that their own transit territory be extended to North Carolina towns and southern points. **Findings.** Upon consideration of all the evidence the Commission HELD, that the 2-cent charge was not unreasonable nor discriminatory, nor were the transit rules found to be so, except as follows: (1) Refusal to apply the transit rate on shipments of a particular kind of lumber weighing less than 1,000 lbs., being part of a mixed carload shipment, was unreasonable; (2) that where cars were weighed at a neighboring point because of absence of scales at the transit point it was unreasonable not to promptly report the weights to the billing office and give shipper opportunity to surrender billing to cover difference between estimated and actual weight; (3) that the "kind-for-kind" rules minimized unlawful substitution, and that the requirements in regard to reports did not appear unreasonable. Complaint dismissed. Nat. Casket Co. vs. S. Ry. Co., 31 I. C. C. 678.

(xx) Loss of weight at a transit point is necessarily incident to the conduct of business under transit. The unit of a transit shipment is the car of manufactured product shipped out from the transit point. The benefits of transit can properly be extended only to the commodity reshipped in accordance with the terms and conditions stated in the carrier's tariff. Loss of weight from dressing, drying, lapse of expense bills and shipments disposed of locally or reshipped to non-transit points is a purely commercial loss. It would be improper to allow a refund of inbound freight charges upon any of the weight thus "lost" or dissipated at the transit point. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 683.

(yy) The utility of a transit arrangement is primarily a question for the shipper, to be determined by ascertaining whether or not it can profitably be availed of under a reasonable charge for the service rendered, and this contemplates a charge which will pay the cost of the service and return a fair profit. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 683.

(zz) Where there are no track scales at a transit point, and cars are weighed at the next station, it is unjust and unreasonable not to promptly report these weights to the billing office and give the shipper opportunity to surrender additional billing. Nat. Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 685.

(3a) Where timber is of many kinds, and several kinds of lumber take the same rates, there is no impropriety in a tariff which permits the shipping of those several kinds of lumber at carload rates in straight or mixed carloads to and from the transit point. Under such a tariff the shipper would, of course, be obligated to confine his outbound shipments under transit to lumber coming from points from which, and of the kinds to which, the transit rates apply. Nat. Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 686.

(3b) The reasonableness of transit rules respecting lumber is to be determined largely in the light of evidence disclosed by the record showing their operation and effect, not only at the points named in the complaint, but elsewhere on defendant's lines. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 688.

(3c) The law is as binding on shippers and carriers as it was before the Commission rescinded rule 76 and withdrew its suggestions. It is now, as it was then, the duty of carriers to initiate and properly police their transit arrangements. It is now, as it was then, the duty of the shipper to conform his

operations to the requirements of the law and of all reasonable rules and regulations of the carrier designed to insure the observance of the law. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 688.

(3d) The cost of service is of controlling importance in considering the reasonableness of a transit charge. Nat. Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 690.

(3e) The general policy of the Commission is not to require the establishment or extension of transit, except where necessary to remove undue discrimination. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 697.

(3f) Elevation has been held to be a part of the transportation which the railroad is required to furnish under the first section. But this refers only to such elevation as is a legitimate and necessary part of transportation as distinguished from commercial elevation; that is, a railroad may employ the owner of an elevator to perform a part of the transportation which is incumbent on the railroad, paying a reasonable compensation therefor. Elevation Allowances at St. Louis and East St. Louis, 30 I. C. C. 696, 697.

(3g) The Commission considered the proposed withdrawal by the L. & N. R. R. and the I. C. R. R. of an elevation allowance of ¼c per bushel on grain at St. Louis, Mo., and East St. Louis, Ill., when destined to Evansville, Ind. Excepting Evansville, no elevation allowand was made at St. Louis and East St. Louis on grain moving to Ohio River crossings, all grain thus handled moving on proportional rates, 5c from St. Louis and 4c from East St. Louis. Transfer at St. Louis was not necessary to secure correct weights, which could be determined at the Evansville elevator or on the scales of the carrier. Most cars were loaded to their capacity, and the haul from St. Louis was but 165 miles, from East St. Louis, 162 miles. The elevation allowance was made by defendants at Peoria, Ill., the rate to Evansville being 7c. The revenue on a 60,000 lb. carload of wheat from East St. Louis to Evansville was $24, from which $7.50 was deducted on account of elevation at East St. Louis and switching at both points, leaving an actual gross revenue of $16.50, or 55c per ton, 3.39 mills per ton-mile, and 10.18c per car mile. The proportional out of which the allowance was made was a compelled rate, the rate from Peoria being shrunk to 5c upon reshipment. HELD, that since it was evident that elevation is not a transportation necessity at St. Louis and East St. Louis, withdrawal of the allowance was justified. Order of suspension vacated. Elevation Allowances at St. Louis and East St. Louis, 30 I. C. C. 696.

(3h) The ratio of milling logs in transit is 1 pound of lumber shipped out to every 3 pounds shipped in. Metropolis Commercial Club v. I. C. R. R. Co., 30 I. C. C. 40, 43.

(3i) Privilege of storage in transit for grain denied where it appears that like privileges are not granted by the defendants elsewhere in that territory and the necessity for storage at the point in question primarily grows out of domestic disturbances in the neighboring country of origin. Newark Grain Co. v. S. P. Co., 30 I. C. C. 431, 433.

(3j) The net cost to the P. M. R. R. at Ludington, after allowing for the payments made to the railroad by the steamship company of elevating grain, is $2.41 per car. Break-Bulk Rates on Grain, 30 I. C. C. 357, 359.

(3k) Credits on account of inbound billing may not be made available for outbound shipments unless used within a given time limit. American Hay Co. v. C. V. Ry. Co., 30 I. C. C. 562, 563.

(3l) The Supreme Court has held that elevation is a part of transportation which the railroad is required to furnish under the first section of the act. Elevation Allowances at St. Louis and East St. Louis, 30 I. C. C. 696, 697.

(3m) As elevation is not a transportation necessity at St. Louis and East St. Louis on Evansville business, the facts of record justify withdrawal of the allowance. Elevation Allowances at St. Louis and East St. Louis, 30 I. C. C. 696, 699.

(3n) Provision in defendant's tariff that benefit of the net rate would be obtained by those who shipped the products of the logs outbound from Evansville, Ind., a transit point, within six months, not found unreasonable. Young & Cutsinger v. L. & N. R. R. Co., Unrep. Op. A-561.

(3o) Defendant allowed a refund on outbound shipments of lumber and va-

rious other articles manufactured from logs, but refused to allow similar refund on outbound shipments of crate material, which is also a product of the inbound logs. HELD, unreasonable and reparation awarded. Paducah Box & Basket Co., Inc., v. I. C. R. R. Co., Unrep. Op. A-582.

(pqr) The rules regarding the granting of the transit privilege must be rigidly enforced and carefully policed to prevent fraud and discrimination. Hecker Cereal Co., of Milwaukee, v. C. & N. W. Ry. Co., Unrep. Op. A-593.

(stu) The Commission investigated the cancellation of transit privileges, whereby shipments of grain and dried beans originating on the D. & M. R. R. could be treated in transit at points on the M. C. R. R., which connected with the former carrier at Bay City, Mich., and the through rate applied from points of shipment to destination, the rate to the two carriers, under an agreement being divided on approximately a mile age basis. About July 1, 1913, the D. & M. R. R. notified the M. C. R. R. that it desired to withdraw from the arrangement, and would thereafter demand its full local rate to Bay City on such traffic. This would result in a shrinkage of the earnings of the M. C. R. R. out of the through rate if the tran sit privilege were continued; and the M. C. accordingly cancelled the transit provision. The tariff, however, provided that such traffic would be given the benefit of transit when moving on the ful combination of local, reshipping or proportional rates from Bay City. The joint through rate on dried beans from Alpena, Mich., to New York City was 30c and the combination on Bay City 38.5c. The joint through rate on wheat and corn was 23c and the combination rate 26.5c. It was not established that the rates were too low, nor was there evidence of their reasonableness per se. The transit privilege was valuable and business conditions had adapted themselves to the existing arrangement. HELD, that a disagreement amongst carriers as to divisions cannot rightfully impose upon shippers an additional burden, where the existing rate is just and reasonable. Advance denied. Transit Regulations on Grain and Dried Beans, 32 I. C. C. 38.

(3v) The varied transit arrangements throughout the country, particularly on forest products, whereby a low inbound rate is applied on the raw material, predicated upon the rate charged upon the outbound movement of finished product, have not been found to be unlawful. Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C. 162, 165.

(3w) The Commission has always been reluctant to authorize the extension of milling-in-transit, fabrication-in-transit and kindred privileges; and unless some compelling reasons are made to appear, such complaints are usually denied. Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185, 186.

(3x) The fact, standing alone, that the fabricated parts of iron used in a certain industry are similar to certain parts used in an industry of a different nature, to which the fabrication-in-transit privilege is granted, does not warrant the extension of the privilege to the industry first referred to, where it appears that the similar articles are in no wise competitive. It is rather the particular necessity arising from the peculiar situation with reference to an industry that gives rise to the application of this prilege. Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185, 187.

(3y) Structural iron and steel used for bridges and buildings are of necessity fabricated at mills far removed from the location of the bridge or building, and it is essentially inexpedient to set up the necessary machinery for such fabrication at the location of the bridge or building. It is this circumstance and condition of things which have warranted the extension of the fabrication-in-transit privilege to this industry. Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185, 186.

(3z) Complainant sought to have the fabrication-in-transit privilege extended to the steel car industry. It constructs steel cars and parts, its plant being located on the line of the Penn. R. R. at Middletown, Pa. Under the tariff iron and steel articles may be fabricated in transit when to be used for bridges, buildings and tunnels at various stations, the rate being 2c in addition to the through rate. The iron and steel parts include angles, bars, beams and some 13 other articles. It was contended that certain fabricated parts for steel cars are fabricated from these iron and steel articles under practically the same methods as are used in fabricating structural steel for bridges and

buildings. The through rate from Pittsburgh, Pa., to Curtis Bay, Md., on these iron and steel articles, C. L., is 14.5c. The rate from Pittsburgh to Middletown is 15c and the rate on the fabricated articles from Middletown to Curtis Bay was 9c, making a through charge of 24c. The rate on the iron and steel articles from Pittsburgh to Butler, Pa., 45 miles east, was 3c, and the rate from Butler to Curtis Bay on the fabricated article 14.5c, making a through rate of 17.5c. One of complainant's competitors was located at Butler. Iron and steel for bridges and buildings are of necessity fabricated at mills far removed from the location of the bridge or building, and it is essentially inexpedient to set up the necessary machinery at such places for doing the work. HELD, this is the circumstance and condition of things that have warranted the extension of the privilege to this particular industry. There is no reason why underframes for steel cars cannot be made at the plant where the other parts are constructed; and no other reason has been advanced, except the similarity of the articles themselves, for the extension of the privilege in question to this industry. The fact that the fabricated articles are similar, standing alone, cannot warrant a similar treatment where it also appears that the similar articles are in nowise competitive. It is the peculiar necessity arising from a peculiar situation that has given rise to this practice in the bridge and structural steel industry, and this necessity is lacking in the steel car industry. Complaint dismissed. Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185.

(4a) A stoppage-in-transit privilege which permits of lean cattle shipped from one point being replaced by fatted cattle at another may result in manipulation of rates and consequent discriminations. Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 324.

(4b Complainants (1) attacked defenants' withdrawal of stoppage-in-transit privileges at Fond du Lac and Verona, Wis., under charges of $2 per car, to finish loading of interstate shipments of live stock to Chicago, Ill., resulting in a combination of locals exceeding the through rate and charge, and (2) attacked the rule of the C. & N. W. Ry. making the rate applicable on mixed carloads of live stock the rate prescribed for the highest rated class of stock in the cars, subject to the highest minimum for any class of stock in the car. Certain respondents proposed an increase from $2 to $5 in the charge for stopping in transit to complete loading and for partial unloading; while others proposed to discontinue altogether the practice of stopping in transit. The carload rate on cattle from Blue Mounds, Wis., to Chicago was 12½c, minimum 22,000 lbs.; on hogs, 17½c, minimum 17,000 lbs. While the transit privilege was a considerable convenience to farmers not more than 4 per cent of the live stock shippers availed themselves of the service, and the practice disarranged train schedules and resulted in serious delays, it being the practice of respondents to run through live stock cars to Chicago in special trains, arriving at the principal markets on certain days and hours. Under the privilege lean cattle were frequently shipped from one point and replaced by fatted cattle at another. HELD, that discontinuance of the practice of stopping live stock cars in transit to complete loading or for partial unloading was not unreasonable, nor could the carriers rule as to mixtures be held unreasonable upon the evidence submitted. Complaints dismissed. Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319.

(4c) Complainants attacked defendant's refusal to extend certain transit privileges on grain and grain products at Pittsburgh, Pa., to shipments shipped in on the line of one defendant and shipped out on the line of the other. Complainants also sought the privilege of shipping out of Pittsburgh mixed carloads of grains, grain products and live stock and poultry feed on the basis of the joint through rates applying on each of the component parts. Though defendants were part of the same railway system, transit privileges were limited to shipments where the entire haul was via one line. But while the lines involved were under common control, neither company was the subsidiary of the other. The privilege of shipping stock feed in mixed carloads was not accorded by defendants at any point. Pending the hearing defendants and other carriers filed tariffs eliminating the privilege of shipping mixed carloads of bran, middlings and screenings, with grain, corn feed, corn and

oat chop, and cracked corn out of Pittsburgh on the basis of the through rate. HELD, (1) that the refusal of defendants to extend the transit privileges as prayed by complainants was not unreasonable nor discriminatory; (2) that the burden of policing the traffic and adjusting accounts justified respondents in withdrawing the privilege of shipping out bran, middlings and screenings in mixed carloads. Complaints dismissed and orders of suspension vacated. Grain and Hay Exchange v. Penn. Co., 32 I. C. C. 409.

(4d) Where a carrier refuses to accord a certain transit privilege at any point on its lines, it cannot be compelled to accord the privilege at a given point merely because it participates in the transportation of shipments which have been accorded such transit privilege by other lines at other points, where it is not in any wise interested in or chargeable with the allowance of such practices by its connecting lines. Grain and Hay Exchange v. Penn. Co., 32 I. C. C. 409, 412.

(4e) Stoppage-in-transit and milling-in-transit practices are outgrowth of entirely dissimilar circumstances and conditions, and practice in respect to one is not controlling in respect to the other. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 151.

(4f) Milling in transit is a privilege which may be granted or withheld by carrier in its discretion so long as unlawful discrimintion does not result therefrom. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 577.

(4g) General policy of Commission not to require establishment or extension of transit except where necessary to remove undue discrimination. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 697.

(4h) Per diem charges an item of expense which may properly be taken into consideration in computing cost of transit service to carrier. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 693.

(4i) Transit charges on rye were placed upon same basis as wheat at many other milling points in Wisconsin and Minnesota as well as at Watertown, Wis. Reparation denied. Former decision adhered to. Globe Milling Co. v C. M. & St. P. Ry. Co., Unrep. Op. A-683.

(4j) Millers in grain-producing territory between Pleasanton, Kan., and southern boundaries of Kansas and Missouri and other points, mill grain in transit without additional charge and forward product to destinations. Rates not found reasonable. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., Unrep. Op. A-728.

(4k) Cancellation of a stoppage-in transit arrangement on fish in carloads from North Pacific Coast points to eastern cities not justified. Transit Privileges on Carload Shipments of Fish, Unrep. Op. A-765.

(4l) The lone fact that lower transit charges are maintained on other commodities is not proof that a certain charge on a given commodity is unreasonable. Saginaw Milling Co. v. M. C. R. R. Co., 33 I. C. C. 25, 28.

(4m) The burden of proof to show that increased transit charges are just and reasonable is on the carrier. Saginaw Milling Co. v. M. C. R. R. Co., 33 I. C. C. 25, 27.

(4n) Complainant attacked the rules and charges of defendant applying to the transit on dried beans at Saginaw and Jackson, Mich., as unreasonable and discriminatory, and asked reparation. The transit charge was 1 1-2c per 100 lbs. An average carload of beans weighed 41,250 lbs.; cost of transit service ranged from $6.56 to $7.47 per car. The rules provided: (1) that on the amount which might be shipped out under transit privilege deduction should be made for loss in weight by reason of cleaning, picking, drying or other treatment and local or other non-transit disposition; (2) that shippers should daily surrender for cancellation all surplus inbound carriers' freight bills; (3) that culls should be reported separately and (4) that a deduction of 1 per cent should be made from nontransit tonnage for invisible loss. Quarterly weighing was also provided for to correct the tonnage. Complainant had refused to cancel billing to cover disposition of transit tonnage, and the carriers withdrew transit privilege. HELD, (1) that the transit charge of 1 1-2c per 100 lbs. was justified; (2) that the rules requiring cancellation of billing on account of loss of weight were reasonable, being necessary to prevent substitution; (3) that a full showing as to disposition of culls was essential to a proper accounting; (4) that the daily deduction of 1 per cent to cover invisible loss was reason-

able, being a mere matter of book-keeping; and (5) that the withdrawal of transit complaint of was justified. Complaint dismissed. Saginaw Milling Co. v. M. C. R. R. Co., 33 I. C. C. 25.

(4o) Shippers should keep records of transit shipments which do accurately show the facts. Saginaw Milling Co. v. M. C. R. R. Co., 33 I. C. C. 25, 29.

(4p) A charge for transportation service should never appear or be applied in the guise of a transit charge, but the charges for the different services should be shown separately. Mixed Car Dealers' Ass'n v. D. L. & W. R. R. Co., 33 I. C. C. 133, 140.

(4q) The interpretation and application of rules in tariffs permitting transit should be uniform. If certain transit users in trunk line territory are permitted to ship outbound traffic on what is called representative or unit billing of inbound against outbound tonnage, and other transit users in the same territory are held to the pound for pound ingredient application, discrimination results. The practice should be conformed to the one system or the other. Mixed Car Dealers Asso. v. D. L. & W. R. R. 33 I. C. C., 133, 141.

(4r) The chief purpose of transit arrangements is to effect an equalization of freight charges and to eliminate discrimination. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C., 133, 138.

(4s) The fact that a miller at a rate breaking point may ship out by any carrier from such point does not constitute undue discrimination within the meaning of the Act as against the miller at an intermediate point who does not enjoy this privilege. Mixed Car Dealers' Ass'n v. D. L. & W. R. R. Co., 33 I. C. C. 133, 142.

(4t) The burden of proof is upon the defendants to show that increased transit charges are just and reasonable. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 136.

(4u) Where the carrier that moves the traffic into the transit point reaches also the point of destination, the effect of requiring it to apply the through rate to destination, irrespective of whether the product moves from the transit point over its own rails or those of another carrier, would be to require it to establish a through route and joint rate with such other carrier, although its own line may not be unreasonably long. Under the limitations of the 15th section of the Act, the Commission has no power to require such a route and rate. Mixed Car Dealers' Ass'n v. D. L. & W. R. R. Co., et al., 33 I. C. C. 133, 142.

(4v) Complainant attacked the transit charges on grain milled in transit at points in New York and Pennsylvania as unreasonable and unlawful, and the transit rules as unreasonable and discriminatory. Defendants rules required that the rate on the original shipment, whether it be grain, grain products, or by-products, should apply through to final destination; a transit charge of not less than 1-2c per 100 lbs., minimum $3 per car to be added, a charge equivalent to the excess of the rate on products over the grain to be added to the transit charge. The transit charge on local grain and ex-lake grain charged at f. o. b. rates from Buffalo, N. Y., was not less than 1 1-4c per 100 lbs. Reshipping rates from Chicago, Ill., to New York, Albany, and Syracuse, N. Y., were on grain, 16, 15.5, and 13c; on grain products 16.7, 16.2, and 13.7c; and on by-products 17.5, 17, and 14.5c; from Cleveland, Ohio, to the same destinations, on grain 14.5, 14, and 11.5; on grain products 15, 14.5, and 12c; and on by-products 12.5, 12, and 9.5c. Thus the charges paid by trunk line millers when the products moved out was not constant, difference between rates on the three different commodities varying with point of origin. Thus at Waverly, N. Y., transit charges varied from $3 to $13 per car. Some of the carriers required cancellation of billing on pound for pound basis; others permitted representative billing. Rules with respect to transit-house records were not uniform. HELD (1) that the application of the through rate on grain, grain products or by-products from point of origin to ultimate destination on grain milled in transit was not unlawful if properly published, and did not result in unreasonable charges; (2) that the practice as to billing should be uniform throughout the territory, either the pound for pound or the representative system being followed; (3) that the transit charge of 1 1-4c on local grain and ex-lake grain charged at f. o. b. rates from Buffalo, N. Y., was not unreasonable; (4) carriers might properly permit grain arriving at a transit house by one carrier to be forwarded by another, but the Commission could not require it. Reparation denied. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133.

(4w) There is no provision of the Act and no rule of the Commission which prescribes what rate shall apply on a combination of commodities made in course of transportation, as for instance, grain milled in transit into grain products or by-products. Mixed Car Dealers' Ass'n et al. v. D. L. & W. R. R. Co. et al., 33 I. C. C. 133, 138.

(4x) Records should be kept which adequately show the facts with respect to transit accounts. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 143.

(4y) Complainant attacked the milling-in-transit arrangements on grain at Waverly, Binghamton, Oneonta, Kingston, Syracuse, Deposit, Olean, Allegany, Norwich and Cohocton, N. Y. Grain is received at these points principally from C. F. A. territory milled into the various products—corn meal, animal and poultry food, etc. The transit rules and charges of the various lines are the same substantially, as follows: (a) Shipment must be charged from point of origin or rate basing point to destination at the rate applying on the commodity from such point. (b) The transit charge will in all cases be assessed in addition. (c) The minimum weight will be: To the transit point, in accordance with the tariff under which the shipment is rated from point of origin or basing point; and from the transit point, in accordance with Official Class'n and exceptions, except that on mixed carloads consisting of grain and any other commodities covered by Rule 1, the minimum shall be 40,000 lbs. The transit charge on inbound grain shall not be less than ½ cent per 100 lbs., minimum $3 per car. When the inbound shipment is grain and the outbound shipment is wholly or partly grain products or by-products, there is an additional charge. The transit charge on inbound grain products and by-products shall not be less than ½c per 100 lbs., minimum $3. When the outbound shipment is offset against an inbound shipment from a point of origin or basing point from which the rates to ultimate destination on grain products and by-products differ, a charge shall be made in addition to the foregoing, equivalent to the difference between the grain products and by-products rates from point of origin or rate basing point, if the outbound shipment is composed wholly or partly of the higher rated commodity. Under the application of the charges as stated, the amount paid out by the trunk line miller when the products move out is not constant. The rules of the different carriers for policing are different. The Lehigh Valley & Delaware & Hudson do their own policing and require cancellation of billing on the pound for pound basis. The other lines place their policing with the Trunk Line Inspection Bureau. This bureau permits transit on what is called representative billing. Similarly, the rules with respect to transit-house records are not uniform. Throughout there is a remarkable lack of uniformity in the application of tariffs which contain substantially the same rules. The practice of charging the rate on grain products or that on by-products through from point of origin or rate basing point is generally in effect throughout trunk line and C. F. A. territory. In In re Milling in Transit Rates, 17 I. C. C. 113, the Commission held that the rate charged must be the rate that was in effect at the time of shipment from point of origin, both movements being considered as one through movement. HELD, the Commission does not find that the application of through rates applying on grain products or by-products on grain milled in transit is unlawful, provided the rates are properly named in the tariffs. It is clear that the charges for transit service at the same point which vary from $3 to $13 per car cannot be successfully defended. The switching service is a transportation service and should not be made appear in the guise of a transit service. The charges for these two services should be shown separately. It is not possible in this proceeding, even if it could be justified as a transportation matter, to require the establishment of one rate basis for grain, grain products and by-products. So long as there are these different rates the transit rate in trunk line territory may properly be the through rate on the grain product or by-product, plus a transit charge of ½c per 100 lbs. In so far as the tariffs of the carriers name the rate which is to be collected on the outbound movement as a transit charge, they are unlawful, and must be corrected at once. The interpretation and application of rules in tariffs permitting transit should be uniform, whether the pound for pound or representative billing arrangement is followed. Just what is now permitted under the representative billing arrangement is not clear, but it appears that the practice, where it is not clearly authorized by the tariffs does permit of unlawful substitutions. The Commission is not prepared on this record to prescribe any rule that

shall govern transit inspection and policing. Defendants should see that they adopt only such rules as do not permit of discrimination between transit users and at the same time will prevent substitution that is prohibited by the tariffs. Complainants insist that they should be permitted to ship out products at points served by more than one railroad irrespective of the route by which the raw material or the product comes in. The fact that a miller may ship out from a rate breaking point, regardless of the inbound carrier, does not constitute undue discrimination. What complainants really ask is that carriers inbound be required to establish to all points of destination joint through rates with all carriers outbound. Where the carrier hauling the traffic inbound also reaches destination outbound, this would have the effect of compelling such carrier to establish through routes and joint rates with some other carrier, although its own line may not be unreasonably long. Under the 15th section of the Act the Commission has not such power. As to the requirements for keeping records, etc., the Commission does not find that these requirements are unreasonable or unduly burdensome. Also under all the circumstances the Commission does not find that it is unreasonable for defendants to refuse to permit transit on "at and east rates" on ex-lake grain from Buffalo. As to the charge of 1¼c for transit on grain originating in trunk line territory and on grain charged at f. o. b. rates from Buffalo, considered on the whole, it is probable that this charge is about equal to the changes on western all-rail grain. Neither is there discrimination as compared with the charge of ½c at Edgewater, N. J., since the latter is within the lighterage limits of New York and takes the same rate as other New York harbor points, the rail haul ending with this movement. Therefore, defendants have sustained the burden of proof and shown the increased charges to be just and reasonable. Reparation denied. Mixed Car Dealers' Ass'n v. D. L. & W. R. R. Co., 33 I. C. C. 133.

(4z) Complainants assailed the action of the A. A. R. R., in withdrawing certain transit arrangements at points on its line in Michigan whereby dried beans might be shipped from Michigan points to points in other states, on basis of through rates from origin to destination, plus a transit charge of $3 per car, and substitution of specific rates approximately equal to one-half the class rate applicable on beans, shipments moving beyond transit point to take the full class rate from transit point to final destination, as unreasonable and discriminatory. Rates on combination approximated the joint through rates from points of origin to ultimate destination. Thus: on shipments originating at Bagnall, Mich., destined to New York, N. Y., and concentrated at Howell, Mich., the inbound, outbound, combination and through rates were 7, 27½, 34½, and 33 1-2c; and where concentrated at Owosso, 6, 28 1-2, 34 1-2, and 33 1-2c; resulting in each case a difference of 1c. HELD, that differences of and under 1 1-2c per 100 lbs., between the combination rates and point through rates were justified; but the difference should not exceed 1 1-2c unless a back haul was involved; (2) that failure of the carrier to grant transit on dried beans under through rates from origin to final destination was not unreasonable nor otherwise unlawful. Complaint dismissed. Michigan Bean Jobbers Asso. v. G. R. & I. Ry., 33 I. C. C. 318.

(5a) On Nov. 7, 1910, in 19 I. C. C. 522 the Commission found that milling-in-transit charges at Newport, Tenn., based on 2c over the through rate discriminatory in favor of Johnson City, Tenn., and required defendant to cease and desist on or before Jan. 16, 1911, and awarded reparation. Defendant thereupon raised the charge at Johnson City to 2c. The Commission on Oct. 14, 1912, in 25 I. C. C. 71, 77, held that 2c was unreasonable at Johnson City. On July 24, 1913, complainant sought further reparation on additional shipments, shipped into Newport prior to Jan. 16, 1911, and reshipped between Jan. 9, 1911 and Dec. 16, 1911. HELD, that while the holding in 25 I. C. C. 71, 77, automatically reduced the 2c charge at Newport to 1½c it did not follow that the 2c charge at Newport was unreasonable throughout the 2-year period preceding Oct. 14, 1912. Spiegle v. S. Ry. Co., 32 I. C. C. 687.

(5b) A claim for reparation cannot include shipments which have moved into a transit point, but have not at the time of making the statement moved out, because it cannot be determined whether they will be entitled to the transit rate until the outbound shipments have been made and the weight and final destination ascertained. Spiegle v. S. Ry. Co., 32 I. C. C. 687, 688.

(5c) Assessment local rates to and

from transit point on barley from Minneapolis, Minn., to Chicago, Ill., and Oshkosh, Wis., malted at Kewaskum, Wis., and held at the latter point until ater expiration of transit time limit on account of destruction of malting plant by fire, found to have been lawful. Rosenheimer Malt & Grain Co. v. C. St. M. & O. Ry. Co., Unrep. Op. A-808.

(5d) Proposed tariffs, which eliminate transit privileges at Atchison and Leavenworth, Kans., on grain, grain products, seeds, alfalfa, and hay in carloads, not justified. Transit Privileges at Atchison and Leavenworth, Kans., Unrep. Op. A-809.

(5e) Carrier's failure to accord transit privileges on eggs drayed from Omaha to South Omaha, Nebr., and reshipped to Denver, Colo., not found unreasonable. Jerpe Commission Co. v. U. P. R. R. Co., Unrep. Op. A-856.

(5f) Car of horses and mules stopped in transit for inspection and an additional horse and mule put in car without taking out new bill of lading or making notation on live stock contract and apparently without knowledge of carrier's agent. Charges not found unreasonable. Russell Bros. v. C. R. I. & P. Ry. Co., Unrep. Op. A-863.

(5g) Schedule proposing cancellation of milling-in-transit arrangement on rye at St. Croix Falls, Wisconsin, not justified. New arrangement provided which has not been shown to be unreasonable. Transit Privileges on Grain and Grain Products, Unrep. Op. A-879.

(5h) While shipment of dried pea beans from Fowler, Mich., to Keokuk, Iowa, was at Lansing, Mich., the transit point, new tariff became effective and complainant was denied benefit of transit rate in effect at time shipment left Fowler. HELD, unlawful and reparation awarded. Isbell-Brown Co. v. G. T. W. Ry. Co., Unrep. Op. A-908.

(5i) Subsequent to movement of shipments of rosin from Mobile, Ala., to Louisville, Ky., reconsigned to points in c. f. a. territory, provisions of tariff were amended, and combination of rates to and from Louisville were charged. Held, unreasonable. Case held open for proof. American Naval Stores Co. v. L. & N. R. R. Co., Unrep. Op. A-922.

(5j) Defendant's failure to furnish cars at transit point within the transit time limit on shipments of broom corn from Quinlan, Okla., to Amsterdam, and South Amsterdam, N. Y., stored in transit at Sterling, Kan., resulted in application of local rates on outbound shipments. HELD, unreasonable. Case held open for proof. Peck v. A. T. & S. F. Ry. Co., Unrep. Op. A-923.

(5k) Withdrawal of fabrication in transit as applied to Structural iron or steel at Oklahoma City, Okla., Topeka, Kans., and other points, not justified. Fabrication-in-transit Privileges at Oklahoma City, Okla., and Other Points, Unrep. Op. A-945.

(5l) Where a perishable product was shipped for treatment to a milling point and owing to delay in transit arrived in a worthless condition so that the consignee refused to receive it, the delivering carrier is liable for the damages which ensues to subsequent cars of the same product which are rendered worthless by being held in transit owing to an embargo issued by the delivering carrier against such cars until the rejected cars are removed. So it does not follow, merely because the cars which caused the blockade were placed on the delivery track for the consignee, that the responsibility of the railway company, ipso facto, terminated, or that it was terminated because of some of the cars having been unloaded by the consignee. If within the reasonable time for inspection, the property was rejected as having been spoiled in transit, and the rejection was persisted in, the consignee only relenting to the extent of accommodating the railway company in its efforts to minimize the loss caused by its wrongfully delaying the transit, then there was no efficient delivery as regards the claim of respondents in this case. Bergen-Crittenden Co. v. C. M. & St. P. Ry. (Wis., 1915), 150 N. W. 496, 501.

(5m) At different dates between May 27, 1907, and February 27, 1908, plaintiff shipped rough lumber to a milling point on defendant's line of railroad. At the time a milling in transit privilege was given by defendant's tariff schedule, under which the finished product was required to be shipped out in certain quantities to destinations on said defendant's line of railroad, and under certain named tariffs carrying specified freight rates then in force. Before plaintiff shipped out any of the lumber, such schedule of rates on intrastate shipments had been canceled, and lower rates established to conform to an order of the State Corporation Com-

mission, and thereafter plaintiff shipped under such lower rates. HELD that, not having complied with the conditions under which the right to a refund on inbound shipments was given, plaintiff was not entitled to the benefit of it. St. L. & S. F. R. R. Co. v. Walton-Chandler Lumber Co. (Okla., 1914), 145 Pac. 340.

(5n) Plaintiff's right to a refund of the difference between the local distance tariffs paid on inbound shipments and the milling in transit or lower rate was dependent upon the shipper causing the lumber to be moved under the existing tariffs. When this was not done, but, instead, the lumber was shipped out under reduced rates, put in force by lawful authority, an action to recover such refund cannot be maintained. St. L. & S. F. R. Co. v. Walton-Chandler Lumber Co. (Okla., 1914), 145 Pac. 340.

(5o) Complainant attacked the rates of 5.5c and 8c on carloads of grain from Minneapolis, Minn., to Milwaukee and Chicago, respectively, milled in transit at Barton, Wis. Defendants' joint through rate of 10c per 100 lbs. permitted milling in transit, provided their agents were at all times granted access to the miller's records. Complainant refused access to a representative of the Western Weighing and Inspection Bureau, of which defendants were members, and they canceled the transit privilege and imposed the local rates to and from Barton. HELD, it is the duty of shippers to aid carriers to effectually police transit privileges, and it does not appear that the tariff requirements in this case, published with that end in view, were unreasonable. Complaint dismissed. Gadow v. C. St. P. M. & O. Ry. Co., 29 I. C. C. 457.

(5p) Complainants attacked defendant's rules and charges relating to protection from cold potatoes in transit as unreasonable and discriminatory. The rules provided that shippers should provide such protection or request carriers to do so; that shipper electing to provide same, carrier would return free the linings, false floors, etc. When delivered to depot at destination and billed to point of origin; free carriage of attendant both ways, when carriers furnished heating, charges varying from 4 to 7c per 100 lbs. to be assessed; a reconsignment charge of $2 per car when shippers furnished prctective service, $3 when furnished by carrier; Carrier relieved from responsibility for damage by freezing when occasioned by inadequacy of protection furnished by a shipper. HELD that rules complained of were not shown to be unreasonable. Complaint dismissed. Miller & Co. v. N. P. Ry., 34 I. C. C., 154.

(5q) A statement purporting to show that for several years past a carrier has sustained an annual loss from its operations as a whole in a given state, affords no basis for determining the adequacy of the compensation received for according transit privileges on cotton and cotton linters at certain points in such state. Concentration of Cotton at Alexandria, La., 34 I. C. C., 163, 164.

(5r) The Commission considered the proposal of respondents to withdraw their net transit rates on logs, rough staves, and stave bolts, fixed at 40 per cent of the lumber rates, at Alexandria, La., when for reshipment beyond the state. The existing rates, as compared with the rates on lumber, were as follows:

Distance	Present rate	Lumber rate
25 miles and under	2	5 to 6
50 miles and over	2½	6 to 6½
75 miles and over	3	6½ to 7½

On the average haul of 47 miles to Alexandria, the existing earnings per ton-mile were 1.1c, per car earnings, $12.50; under the proposed rates would yield 2.5c per ton-mile and $30 per car; but the cancellation would restore flat rates. Alexandria being at the end of a branch line, cancellation of the privilege would probably cause the commodity to move to New Orleans, direct, thus increasing respondent's revenue. HELD that respondent's had not justified the proposed increase and the proposed rates were not reasonable and free from unjust discrimination. Transit Rates on Logs and Staves at Alexandria, La., 34 I. C. C. 169.

(5s) Whatever may be the theory of transit provisions and the Commission's attitude on the general question of the propriety and practicability of such provisions, especially with reference to flat rates, a withdrawal of such arrangements cannot be sanctioned without the establishment of reasonable and non-discriminatory rates and practices in lieu thereof. Transit Rates on Logs and Staves at Alexandria, La., 34 I. C. C. 169, 171.

(5t) The theory that cancellation of interstate rates, leaving equivalent in-

trastate rates still in effect will not result in discrimination because all intrastate traffic would be treated alike, is not approved. Transit Rates on Logs and Staves at Alexandria, La., 34 I. C. C. 169, 172.

(5u) The Commission has jurisdiction to order a carrier to either install or continue a milling-in-transit arrangement for other purposes than merely to remove discrimination. Transit Rates on Logs and Staves at Alexandria, La., 34 I. C. C. 169, 172.

(5v) Complainant alleged that the failure of the defendant at Indianapolis, Ind., to permit at that city storage in transit on apples from western and eastern points of origin, as permitted at Chicago, St. Louis, and other western cities, resulted in unjust and discriminatory charges. While the western lines permitted storage in transit at these points on basis of the through rate plus a transit charge of from 1 1-2 to 5c per 100 lbs., the privilege was not accorded by any road in official classification territory; and while such lines joined in through rates published by the western lines, they received no part of the storage-in-transit charge nor did they shrink their revenues under the through rate. HELD that the lines serving Indianapolis had not, by forming through routes and joint rates with western lines permitting storage in transit of apples on their lines, while refusing to establish storage in transit at Indianapolis, discriminate against complainants. Complaint dismissed. Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry., 34 I. C. C., 267.

(5w) In 24 I. C. C. 609, the Commission found that under the rate structure and transit rules applicable to grain and mixed feed. Memphis, Tenn., was unduly restricted in its source of supply as compared with St. Louis, Mo. In the readjustment which followed most of the restrictions were eliminated; but it was provided that grain from the northwestern grain area delivered to the I. C. R. R. on combination rates at St. Louis or the Ohio River crossings must be shipped from Memphis via the same line, subject, however, to diversion under reshipping rates to Mississippi valley points of consumption on other lines. The readjustment made no provision for transit privilege at Memphis on grain from the southwestern producing area. HELD that the transportation advantage of reshipping rates applied from St. Louis to Mississippi Valley on grain and mixed feed is no longer undue in its effect on Memphis grain dealers; but the relief granted in extending the territory from which Memphis dealers may draw grain under the transit arrangement appears incomplete with respect to southwestern producing territory. Memphis Grain & Hay Asso. v. I. C. R. R., 34 I. C. C. 315.

(5x) Complainant attacked defendant's rules and regulations applicable to lumber handled in transit at Newport, Tenn., and charges for "back-haul" shipments, as unreasonable and discriminatory, and its minimum charge of $6 per car for milling in transit as unreasonable and unlawful. TRANSIT RULES: These prohibited substitution, provided for use of the "Footage" and weight rule, ascertaining what lumber might move in transit and the charges therefor required daily reports limited to 12 mo. the time in which expense bills must be applied, and forbid a credit slip on less than 1,000 ft. of a given kind of lumber in a mixed carload. HELD, following National Casket Co. v. S. Ry. Co., 31 I. C. C. 687, that the rules attacked were reasonable. BACK HAUL CHARGES: On lumber drawn from points between Newport and Asheville, N. C., milled in transit at Newport, and shipped via Asheville to eastern markets, the back-haul charge from points between Paint Rock, N. C., and Asheville was 3c per 100 lbs., average distance 41 miles on shipments from Paint Rock and intermediate points, 2c, average distance 14.25 miles. The average local rate from stations between Paint Rock and Asheville was 5.5c. HELD that the back-haul charges in question were neither unreasonable nor discriminatory. MINIMUM CHARGE: Bristol, Johnson City, and Newport were on a uniform basis in this respect. Complainant's shipments averaged over 45,000 lbs. HELD that the $6 per car minimum charge on lumber handled in transit at Newport was not unreasonable. Reparation denied. Complaint dismissed. Spiegle & Co. v. S. Ry. Co., 34 I. C. C. 448.

(5y) The Commission considered proposed increases in the rates from East St. Louis, through Louisville or Cincinnati, to points in southeastern and Carolina territories, on grain milled in transit at points between East St. Louis and Cincinnati. The existing arrangemen:

provided for milling in transit on basis of through rates plus 1-2c transit charge. It was proposed to charge rates 2c greater than the through rate from East St. Louis. Respondent's ton-mile earnings on its 4 1-2c rate to Louisville and Cincinnati were but 2.89 and 2.68 mills, respectively, on hauls of 312, and 336 miles. Protestant's chief competitors were the St. Louis mills, which would still be able to ship to the destinations involved on the basis of the through rates. HELD that respondent had not justified the proposed tariff, since it would effect an unjust discrimination against protestants in favor of millers at St. Louis, Louisville, Cincinnati, and at points in Tennessee. Rates on Grain Milled in Transit, 35 I. C. C. 27.

§15½. Transhipment.

(a) Shipment of lumber transferred en route into another car. Subsequently another shipment from same point of origin and transferred en route into car in which first shipment originated. Carrier notified consignor, giving ex-car number, but consignor misunderstood and ordered reconsignment. Reparation denied. Berthold & Jennings Lumber Co. v M. & O. R. R. Co., Unrep. Op. A140.

§16. Wharfage.

See Panama Canal Act.

(a) Damages awarded for failure of complainant to receive equal wharfage facilities at Galveston, Tex.. Eichenberg v. S. P. Ry. Co. 28 I. C. C. 584.

(b) Complainant attacked certain wharfage charges collected by defendant dock company at Port Aransas, Tex., on import shipments of fuel oil in bulk as unjust and unreasonable. By agreement, complainant had erected a storage tank on defendant's wharf to which oil was conveyed by a pipe line from deep-water vessels; complainant paying $3,200 per year rental for the privilege and no wharfage charges to be made. Nevertheless, under a tariff provision that vessels and their owners "landing goods on the wharfs" should pay wharfage the charges complained of were collected. No wharfage or other services were performed by the dock company. HELD, that the defendant's tariff provisions were not applicable to the shipments in question, since they did not specifically embrace oil transferred from ship to tank through a pipe line. Magnolia Petroleum Co. v. Channel & Dock Co., 34 I. C. C. 330.

§16½. Warehousing and Storage.

See Storage.

(a) It is incumbent upon carriers to provide adequate station and warehouse facilities for the expeditious handling and delivery of freight transported by them. Merchants' & Manufacturers' Association v B. & O. R. R. Co., 30 I. C. C. 388, 393.

III. PUBLICATION AND TARIFFS.

See Tariffs.

§17. Obligation to Publish.

(a) The service performed in transporting the grain products or by-products from the transit house is a transportation service for which a rate should be named in a tariff and which should be shown on the outbilling; and it is unlawful to publish a transportation charge in the guise of a transit charge. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 140.

(b) Section 6 of the Act provides that tariffs must show separately the charges that are to be assessed for any particular service. If the rate on products is to be applied from point of origin or rate-basing point on grain milled in transit, it should only be applied as a rate for transportation named in a tariff and shown on the billing for the outbound shipment. The billing should show what has been charged for transportation under the tariff naming the rate and what has been charged for the transit as provided by the tariff governing transit. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C., 140.

§18. Reshipping Under Through Rate.

See Through Routes and Joint Rates, §19.

(a) Where two carriers have lines from the transit point to final destination, and the tariff of the originating carrier authorizes dressing in transit over one line only, a shipment of lumber to be dressed, in transit, is in effect, routed over the lines of the originating carrier and the line authorized. Pine Belt Lum. Co. v. G. & S. I. R. R., 33 I. C. C. 117.

(b) The application of the through rate on grain products or by-products from point of origin to ultimate destination on grain milled in transit is not unlawful if properly published, and does

not result in unreasonable charges. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 140.

(c) Property accorded transit under a through rate must be regarded as in course of transportation from the time it is moved from the point of origin and the through rate in effect at the time of the initial movement must be applied. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 139.

(d) It is not until the outbound shipment occurs that a higher rate on the products can be made. There is no connection between the inbound and outbound movement until the outbound shipments has been tendered to the carrier by the transit house. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 141.

(e) According transit at a junction point under which the product may be sent forward from that point by a carrier other than the one that brought in the raw material, is an arrangement which carriers may enter into voluntarily. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 142.

(f) To charge the rate on products through from point of origin to ultimate destination on grain milled in transit is not unreasonable. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C., 133, 144.

(g) Where the carrier that moves the traffic into the transit point reaches also the point of destination the effect of requiring it to apply the through rate to destination, irrespective of whether the product moves from the transit point over its line or over the line of some other carrier, would be to require it to establish a through route and joint rate with such other carrier, although its own line may not be unreasonably long. Under the limitation in the fifteenth section of the act, the Commission has not the power to require such a route and rate. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C., 138, 142.

(h) Refusal to ship out from Pittsburg on basis of joint through rates two different kinds of grain which have originated on two different roads not found unreasonable. Grain & Hay Exchange v. P. Co. 32, I. C. C., 409, 410, 411.

(i) After expiration of transit time limit it became carrier's duty to collect charges on basis of local rates to and from transit point. Rosenheimer Malt and Grain Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-808.

(j) Transit tariff reissued subsequent to movement of shipments in question permits eggs drayed from one concentration point and reshipped from another to be moved at the through carload rate from point of origin. Failure to accord privilege in this case not found unreasonable. Jerpe Commission Co. v. U. P. R. R. Co., Unrep. Op. A-856.

(k) Defendant's failure to furnish cars at transit point within the transit time limit on shipments of broom corn from Quinlan, Okla., to Amsterdam and South Amsterdam, N. Y., stored in transit at Sterling, Kans., resulted in application of local rates on outbound shipments. HELD, unreasonable. Case held open for proof. Peck v. A. T. & S. F. Ry. Co., Unrep. Op. A-923.

§19. Retroactive Application.

See Reconsignment. §6.

(a) Damages denied where discrimination was alleged against Atlanta in favor of Paris and Lexington, Ky., by reason of failure to establish a transit privilege at Atlanta prior to May 16, 1909. Atlanta Milling Co. v. L. & N. R. R. Co., 31 I. C. C. 485, 486, 489.

(b) It has been contrary to practice of the Commission to make awards of reparation which in effect amount to the retraoctive application of a transit privilege except where there was a clear showing of some violation of the act. Globe Milling Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-683

(c) Commission will not sanction the retroactive application of transit privileges, except upon showing of unreasonableness or of damage arising out of undue prejudice or discrimination. Meeds Lumber Co. v. A. C. Ry. Co., Unrep. Op. A-829.

§20. Substitution of Tonnage.

See Substitution of Tonnage.

(a) Local or nontransit disposition should be accounted for. In the case of dried beans the most effective means to proper accounting appears to be a full showing as to the disposition of culls. Saginaw Milling Co. v. M. C. R. R. Co., 33 I. C. C., 25, 29.

(b) The service rendered by a carrier in transporting the product from a transit point is different from that ren-

dered in transporting the raw material to the transit point. In many cases the product is of greater value, and the minimum loading is usually lower. The service to the transit user is oftentimes of greater value. Where the outbound shipment consists of a mixture of a number of kinds of grain, done up in small packages, the transit shipper is, in effect, given a carload rating on less-than carload shipments. The carrier is fairly entitled to a higher charge on the outbound movement. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C., 133, 139.

(c) There is no provision of the Act, and no rule of the Commission which prescribes what rate shall apply on a combination of commodities made in course of transportation. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C., 133, 138.

(d) A practice whereby inbound billing of a single kind of grain is permitted to be surrendered upon the shipment outbound of a car containing a like quantity of the mixed product of various kinds of grain, provided the mixed product contains a substantial amount of the kind of grain named in the surrendered billing, if not clearly authorized by the tariffs, permits unlawful substitution. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C., 133, 141.

IV. DISCRIMINATION.

See Discrimination.

§21. In General.

(a) Where a carrier makes a practice of segregating at its terminals L. C. L. inbound freight consigned to certain consignees or in the care of certain teamsters, subject to reasonable rules and regulations, there is no undue discrimination, provided the same practice is extended to other consignees or draymen, subject to the same reasonable rules and regulations. Phila. Team Owners Pro. Assn. v. Ry. Co., 32 I. C. C. 387, 392.

(b) Under section 2 no discrimination shown because of withholding transit privilege from corn milled into starch. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 594.

FERRIES.

(a) In view of the lower earnings by the break-bulk route, carriers should, perhaps, not be required to maintain lower rates via this route than via the car-ferry or all-rail routes. Break-Bulk Rates on Grain, 30 I. C. C. 357, 363.

(b) Section 1 of the act includes ferries within the term "railroad" Grain Rates from Milwaukee, 33 I. C. C., 417, 424.

(c) Discontinuance of absorption of ferry charges between Nauvoo, Ill., and Montrose, Iowa, on grain, fruit and fruit packages, justified. Absorption of Terminal Charges at Montrose, Iowa, Unrep. Op. A-913.

FINANCIAL OPERATION.

§1. In General.

See Accounting, §1 (a); Advanced Rates, §2½ (b); Common Carrier, §5; Evidence, §43 (k).

(a) Section 20, authorizing the use of mandamus, does not authorize the use of that remedy in aid of an investigation by the Commission, pursuant to Senate resolution, to compel a railroad to disclose the amount of its stocks and bonds owned or controlled by another line, and whether the two lines serve the same territory and under separate ownership would be competitors. United States v. L. & N. R. R. Co., 212 Fed. 486, 492; affirmed 236 U. S. 318.

(b) A senate resolution directing the Commission to investigate and report the relations between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Ry. and the relation and conduct of these and other railroads in respect to various matters set out in a resolution, including the number of free passes issued by the carriers since January 1, 1911, to public officials or at their request, with the total mileage and money value thereof and which does not appear either to have been concurred in by the House of Representatives or approved by the President, is not a law of the United States and does not enlarge in any manner the authority or jurisdiction of the Commission under the Interstate Commerce Act. U. S. v. N. C. & St. L. Ry., 217 Fed. 254, 260.

(c) In response to resolutions of the Senate of the United States that the Commission investigate and report all facts and circumstances connected with the purchase of the C. & E. I. R. R. by the St. L. & S. F. R. R. Co., and the subsequent receivership of both, and the facts and cir-

cumstances connected with the purchase of the St. L. B. & M. R. R. by the St. L. & S. F. R. R. Co., the Commission submitted the following report. **St. Louis & San Francisco Railroad Co., General Facts.**—A receiver for the St. L. & S. F. R. R. Co. was applied for May 27, 1913, on petition of James Campbell, vice-president and director of the St. L. & S. F. R. R. Co., and president of the North American Co., of New York, ostensibly on the ground of default in payment of a six months' six per cent note issued by the St. L. & S. F. R. R. Co. to the N. A. Co., due April 21, 1913, for $625,000, upon which a payment of $225,000 had been made before maturity. The true cause of the receivership was inability of the St. L. & S. F. Ry. Co. to meet the principal, its five per cent notes, dated June 1, 1911, due June 1, 1913, amounting to $2,250,000, sold to F. S. Morsely & Co., of Boston, and secured by $2,500,000 par value of St. L. & S. F. Ry. Co. and C. & E. I. R. R. Co. common stock trust certificates, and $1,490,000 St. L. & S. F. Ry. Co.-K. C.- F. S. & M. preferred stock trust certificates, pledged as collateral with the Old Colony Trust Company of Boston. This collateral being deemed insufficient by the holders, on May 20, 1913, the St. L. & S. F. Ry. deposited $5,000,000 capital stock of the New Mexico and Arizona Land Co. and $200,000 in St. L. & S. F.-N. O. T. & M. division bonds as additional security. The stock of the Land Co. stood in the names of the counsel and the treasurer of the St. L. & S. F. Ry. Co., and the lands consisted of over 1,000,000 acres located in the states named. The certificates were indorsed for transfer, resignations of Hamilton and Douglas, the latter vice-president in charge of the accounting department, as directors, effected on instructions from Vice-President Hilliard, and Newell and Reed, employes of Campbell, elected in their stead. A statement of the treasurer of the St. L. & S. F. Ry. Co. of April 19, 1913, showed an apparent deficiency of $749,880 and unpaid vouchers aggregating $1,681,000. On May 27th the unpaid vouchers amounted to $2,233,635. Notwithstanding its apparently exhausted financial condition, the St. L. & S. F. Ry. Co. sold to Speyer & Co. of New York, shortly before appointment of receivers, $3,000,000 of general lien five per cent bonds, at 78. Yet Speyer & Co. should have been aware of the poverty of the St. L. & S. F. Ry. Co. and its difficulties in obtaining funds, having advanced that company $725,000 on demand note on April 24, and $50,000 on April 29, and applied proceeds of sale of $1,000,000 of the bonds to liquidation of the notes. While compelled to borrow from every available source, the St. L. & S. F. Ry. Co. advanced to one A. T. Perkins, $924,464 as trustee of the B. S. & I. R. R. and S. B. & R. G. V. Ry., $110,297 for extensions on the St. L. B. & M. Ry., and paid him $50,000 cash and executed its one year note for May 1, 1913, for $1,493,088 and its six per cent demand note for $950,000, as purchase price for the N. I. & N. R. R. and the I. St. M. & E. R. R. The St. L. & S. F. Ry. had acquired in May, 1912, the syndicate interest of B. F. Yoakum in these properties, paying him $12,698 in cash and giving a note for $200,000. which was paid Nov. 6, 1912. The difficulties of the St. L. & S. F. Ry. Co. were of a financial and not of an operating character. Despite increase in net operating income from $2,332,158 for the year ending June 30, 1897, to $11,677.437 for 11 months of the fiscal year 1913, the surplus income available for dividends in 1897 was $331,065, while on May 27, 1913, there was a deficit of $1,069,915. Had it not been for book charges covering loss on operation of south Texas lines amounting to $1,219,293 and amortized discount of $943,222, there would have been a surplus of $1,092,599, or an increase in surplus of the 1913 period over the year 1897 of $761,534. Absorption of the increased net operating income is accounted for by charges of $3,140,610, covering cost of lease of K. C. F. S. & M. Ry., the K. C. M. & B. R. R., and the K. C. M. Ry. & B. Co., and by increase in interest on funded debt from $1,994,448 to $10,684,788, between the dates mentioned. Gross earnings per mile operated increased from $5,157 for the fiscal year 1897 to $8,306 for the 11 months ending May 27, 1913; net earnings increased from $2,159 to $2,733; and funded debt interest per operated mile increased from $1,716 to $2,253. Ratio of operating expenses to gross revenues increased from 58.30 per cent for 1897 to 67.17 per cent for 1912; and freight earnings per mile of road increased from $3,857 for the fiscal year 1897 to $5.465 for the fiscal year 1912, while during the same period the revenue per ton-mile decreased from 11.11 mills to 9.22 mills. Increase in traffic and operating revenues had been secured, but the benefits had

been absorbed by increased interest charges. Insolvency of the St. L. & S. F. Ry Co. may be attributed to: (1) Disproportionate capitalization, (2) acquisition of new lines, (3) financing of the N. O. T. & M. R. R. and other Texas lines, (4) desire for entrance into Chicago, Ill., resulting in heavy fixed charges in acquisition of the C. & E. I. R. R., (5) sale of securities at prices so low as to indicate a deplorably weakened credit or an extravagant arrangement with bankers, and (6) miscellaneous causes, such as payment of dividends on preferred stock in spite of weakened credit, poor investments and expensive rentals. **Disproportionate Capitalization.**—The total capital of the St. L. & S. F. Ry. Co., May 27, 1913, was $295,633,933, of which $51,364,100 was capital stock and $244,269,833 was funded debt. Thus the funded debt amounted to 82.63 per cent of the total capital liability. Interest bearing liabilities exceeded stock liability by 375 per cent. This excessive issue of bonds instead of capital stock may be due in part to the Missouri requirement that capital stock of railroads may not be sold at less than par, while bonds may. **Acquisition of New Lines.**—In 1897 the officials of the St. L. & S. F. Ry. Co. entered upon an era of expansion and acquisition of new lines, apparently constructed in the belief that the St. L. & S. F. Ry. Co. would purchase them upon completion. In that year the mileage of the St. L. & S. F. Ry. Co. consisted of 1,162 miles. During the next ten years 15 additional lines were purchased, aggregating 2,375 miles, and 15 miles sold, making a total owned mileage of 3,522 miles. The additional lines cost $62,000,000. Since 1907 the St. L. & S. F. Ry. Co. expansion is represented by an addition of but 15 miles of leased trackage. The sums paid for the new lines in excess of actual construction costs are not known. Divers means were employed to finance the transactions; in some cases cash being paid for the securities of the company purchased, while in other instances securities of the St. L. & S. F. Ry. Co. were exchanged for those of the railroad company that had constructed the line purchased. In acquiring the St. L. M. & S. E. R. R. bonds of that company and underlying issues of its constituent companies, aggregating $16,000,000, were assumed. A number of lines acquired were purchased at price which afforded large profits to syndicate subscribers and trust companies; among the former various officers of the St. L. & S. F. R. R. Co., and among the latter officers of the St. Louis Union Trust Co., manager for the syndicates which financed the construction of a number of the lines. A syndicate of 51 members was formed for construction of the O. C. & W. R. R., $2,097,043 was subscribed, and on completion the line was sold to the St. L. & S. F. R. R. Co. at a profit to the subscribers of $369,278, three officers of the St. L. & S. F. Ry. Co. subscribing from $15,000 to $20,000 each, on which they realized profits of from $2,000 to $3,000 each. A syndicate was formed to finance the construction of the St. L. S. F. & N. O. R. R., $5,300,000 being subscribed. The syndicate was dissolved and the subscribers given $5,888,888 in four per cent bonds of the St. L. S. F. & N. O. Ry. and $1,060,000 of its preferred stock. These securities were refunded by the St. L. & S. F. Ry. Co., resulting in a profit to the syndicate of $837,400. The common stock, $6,021,000, was delivered to the St. L. & S. F. Ry. Co. without further compensation. Five St. L. & S. F. Ry. Co. officials and directors connected with this syndicate subscribed from $50,000 to $850,000, realizing profits of from $7,900 to $134,000. Yoakum, the only official of the St. L. & S. F. Ry. Co. interested in the syndicate formed to finance the St. L. & G. R. R., paid in $75,000, and received $113,187; in addition making $28,000 through the purchase of 9 small properties which were consolidated with the St. L. & G. Ry. The syndicate in this case received $4,920,000 of the bonds of the St. L. & G. Ry., $173,00 of it used to defray expenses, exchanging the balance for 4½ per cent bonds of the St. L. M. & S. E. Ry., resulting in a profit to the syndicate subscribers of $1,385,696. A syndicate of 35 paid in $1,000,000 to finance the construction of the St. L. & O. C. R. R., and the property was sold to the St. L. & S. F. Ry. Co., for $1,868,700, the subscribers profiting in the sum of $656,150. No officials of the St. L. & S. F. Ry. Co. appear to have been involved in this transaction. Johnson Bros. & Faught and the St. L. O. & S. Ry. Co. contracted for the construction of that line. The former were to receive $5,500,000 in capital stock and bonds in the sum of $22,500 per mile, not to exceed $4,500,000. These bonds were sold to various parties, including Cheney, a director of the Frisco,

at 78½ per cent of their par value. The bonds were guaranteed by the Frisco, for which it received the capital stock without further compensation. Cheney subscribed $389,026, his proportion of the bonds being $495,575. The transaction resulted in a profit to the parties of $719,-594. A syndicate of 61 was formed to finance the A. V. & W. R. R. and $3,046,-635 paid in. The property was sold to the St. L. & S. F. R. R. Co. for net $3,825,000, yielding the subscribers a profit of $589,767. One director and 5 employees of the St. L. & S. F. Ry. Co. subscribed amounts ranging from $9,518 to $118,987 on which they realized profits of from $1,842 to $23,031. The N. I. & N. R. R. and I. St. M. & E. R. R. were built with funds contributed by a syndicate of 20, $1,000,000 being subscribed in cash and $1,100,000 secured from the St. Louis Union Trust Co. and the Canal Louisiana Bank of New Orleans, on notes of the subscribers. Under an agreement between the syndicate managers and Hilliard, trustee, these lines were sold to the latter, the St. L. & S. F. Ry. Co. guaranteeing full performance by the trustee. About $2,000,000 was expended on the properties and the lines were then purchased by the Frisco for $2,493,088, the sum of $50,000 being paid in cash, and balance covered by a six per cent demand note for $950,000, and a six per cent one-year note for $1,493,088, secured by the stock of the companies purchased and the equity of the St. L. & S. F. Ry. in all securities and real estate located in Dallas and Beaumont, Tex., valued at $750,-000. Yoakum paid in $190,000 to the syndicate and later the board of directors of the St. L. & F. Ry. Co. purchased his interest for $12,698. Profits to the syndicate amount to $500,000 plus an interest in unpaid bonuses of about $100,-000. Profits of $3,011,928 were realized by syndicate subscribers who financed the St. L. B. & M. Ry., and the Gulf Construction Co. received $375,000 profits for financing part of the C. S. N. O. & P. R. R. The following is a summary of amounts subscribed by syndicate members and advanced by trust companies with their profit:

Name of Railroad.	Amount Paid In.	Profit.
Oklahoma City & Western	$2,097,043.95	$ 369,278.82
St. Louis, San Francisco & New Orleans	5,300,000.00	837,400.00
St. Louis & Gulf	2,700,000.00	1,885,696.52
St. Louis & Oklahoma City	1,000,000.00	556,150.00
St. Louis, Oklahoma & Southern	3,423,432.10	719,574.90
Arkansas Valley & Western	3,046,635.00	589,767.32
New Iberia & Northern	2,000,000.00	500,000.00
St. Louis, Brownsville & Mexico	3,981,000.00	3,011,928.95
Colorado, Southern, New Orleans & Pacific	3,000,000.00	375,000.00
Total	$26,548,111.05	$8,444,796.51

South Texas Lines.—The St. L. & S. F. Ry. Co. advanced to the C. S. N. O. & P. R. R. and its successors, the N. O. T. & M. R. R., $33,000,000 for construction of new lines, acquisition of securities of existing lines forming the through route, New Orleans to Brownsville, Tex., and payment of interest on N. O. F. & M. bonds. The Frisco lost on this investment over $8,000,000. The St. L. S. F. & T. R. R. owes the Frisco $2,122,011 on unliquidated freight balances. **Acquisition of C. & E. I. R. R. Co.**—In 1902 the St. L. & S. F. Ry. Co. purchased the stock of the C. & E. I. R. R. by the issuance of St. L. & S. F. R. R. stock trust certificates on the basis of $150 for preferred and $250 for common stock of the C. & E. I. Ry. To meet fixed charges thereon, it was essential that the St. L. & S. F. Ry. receive in dividends from that line, six per cent on preferred and ten per cent on common stock. The dividend on common stock has been sufficient to meet interest on stock trust certificates in but three years, resulting in a net loss of $1,710,388. **Discount.**—During 12 years, the Frisco's discount on bonds and notes other than short-term notes, aggregated $32,152,602, or less premiums on refunding bonds and notes, $30,665,749. The C. R. I. & P. Ry. secured control of the St. L. & S. F. Ry. in 1903 and retained control until 1909, the credit of the C. R. I. & P. Ry. never being extended to the St. L. & S. F. Ry. During that time the latter railroad issued $71,000,000 in short-term notes and liquidated the same, except $1,641,329. The net increase in the funded debt for the period was $78,-000,000. The securities of the St. L. & S. F. Ry. issue, and of the K. C. F. S. & M. Ry., controlled by the St. L. & S. F. Ry. Co., brought prices ranging from 62½ to 98. At four per cent, the $30,665,749 of net discounts and commissions represents an annual expenditure of $1,226,630 for interest on money which the St. L. & S. F. Ry. never received. Commissions varying from 1 to 2½ per

cent paid bankers, aggregated more than $3,000,000. **Dividends.**—While its securities were sold under heavy discounts, and while it was borrowing funds to meet obligations, the St. L. & S. F. Ry. paid four per cent annual dividends on its $5,000,000 of first preferred stock to March 31, 1913. Dividends on second preferred were discontinued in 1906. Thus the company, whose securities were discounted as high as 37½ per cent, attempted to maintain a prosperous appearance by disbursing dividends which were not earned. **Investment in the New Orleans Terminal Company.**—The capital of this company consists of $2,000,000 stock and $14,000,000 of four per cent bonds, half of the stock owned by the St. L. & S. F. Ry. and half by the S. Ry., who have endorsed its bonds. But neither company makes any direct use of the terminal property. The St. L. & S. F. Ry. has no line into New Orleans. Its proportion of the terminal interest charge is $280,900 per annum, and it receives less than $50,000 as its portion of the revenues. A portion, however, of the interest charge is shifted by the St. L. & S. F. Ry. to the N. O. T. & M. R. R., leaving a net charge against the St. L. & S. F. Ry. of $180,000 per annum. **Investment in Stock of Kirby Lumber Company.**—In 1903, the St. L. & S. F. Ry. Co. invested $1,248,750 in stock of this company, no dividends upon which have been received. At four per cent per annum, the loss on this investment amounts to about $500,000. **Rentals Paid Crawford County Mining Company.**—In 1907, the St. L. & S. F. Ry. entered into a 99-year contract with this company, under the terms of which the St. L. & S. F. Ry. has paid $27,000 per year to meet interest payments on sinking fund bonds of the mining company, the sole consideration to the St. L. & S. F. Ry. being the right to place cars at the mines and take them therefrom. **Effect of St. L. & S. F. Ry. Financial Policy.**—The policy of the St. L. & S. F. Ry. in acquiring new lines, at excessive prices, sale of securities at extravagant rates of discount, investment in stocks of industrial companies on which no dividends have been paid, assumption of heavy fixed charges for its Texas lines and the C. & E. I. Ry. and payments of heavy charges on terminal and coal properties, has resulted in the absorption of its net revenue to the extent of between $3,500,000 and $4,000,000 per annum, representing approximately from 31.09% to 35.06% of its total funded debt interest per annum. To meet these charges, assuming that the St. L. & S. F. Ry. conducted on an operating ratio of 70 per cent, would require gross revenues amounting respectively to $11,072,800 or $12,485,170. The total gross earnings for the fiscal year 1913 amounted to $43,000,000, these amounts representing 25.69 to 29.04 per cent of that sum. **Acquisition of the Stock and Statistics of the C. & E. I. R. R. Co. and Statistics of the St. L. & S. F. Ry. Co.**—In 1902, the St. L. & S. F. Ry. Co. offered both the preferred and common stock of the C. & E. I. Ry. in exchange for its six per cent preferred stock trust certificates and ten per cent common stock trust certificates, at the rate of $150 and $250 per share, respectively, and entitling the holder to quarterly dividends of $1.50 and semi-annual dividends of $5 per share, respectively. The certificates were to be issued under a trust agreement with the Colonial Trust Co. and secured by the pledge of the deposited stock. On failure of the St. L. & S. F. Ry. to pay such dividends, the holder of the certificate might surrender it to the trust company and receive the amount of the stock represented thereby. On July 1, 1902, there was outstanding $7,965,700 of preferred and $12,448,400 of common C. & E. I. Ry. stock, and on May 27, 1913, $12,191,700 of preferred and $13,626,100 of common stock. Holders of C. & E. I. Ry. common stock, on July 1, 1902, numbered 269, holding from one share to 52,306 shares each. The 52,306 shares were in the treasury of the company. There were 17 holdings of from 1,000 to 8,611 shares. The total of C. & E. I. Ry. common shares in the hands of the public June 30, 1903, was 72,178 shares, of which 70,642 had been deposited in exchange for $17,660,500 in St. L. & S. F. Ry. trust certificates and 68,307 shares of C. & E. I. Ry. preferred stock, of which 41,717 had been deposited in exchange for $6,257,500 of St. L. & S. F. Ry. Co. trust certificates. Stock outstanding May 27, 1913, amounted to $12,191,700 preferred, 72,178 shares of common and 84,025 shares of preferred having been exchanged for trust certificates. The liability of the St. L. & S. F. Ry. on that date represented by such trust certificates was $18,044,500 on common and $12,603,750 on preferred, a total of $30,648,250; of which the St. L. & S. F. Ry.

Co. had acquired and placed in the treasury $2,520,000 of common stock trust certificates at a cost of $1,884,320, leaving outstanding $15,524,500 of common and $12,603,750 of preferred. On Nov. 15, 1905, $10,113,000 in common stock certificates in denominations of $1,000 each, in exchange for the 10 per cent certificates of the old form, and additional certificates up to the total sum of $18,044,500. The St. L. & S. F. Ry. trust certificates are in the hands of 1,034 holders; 996 in the United States, three in France, and 35 in Great Britain. The St. L. & S. F. Ry. investment in the stock of the C. & E. I. Ry. was not profitable, resulting in a net loss of $1,710,388. The annual interest charge of the St. L. & S. F. Ry. on the common stock certificates was $721,780. The last dividend paid on this stock was five per cent, paid in December, 1911. Interest on the common stock certificates was paid to Dec. 31, 1912. After payment of dividends the income account of the C. & E. I. Ry. showed deficits for 1905 and 1908 of $80,265, and $115,394, respectively. The C. & E. I. Ry. loaned to the St. L. & S. F. Ry. during the period 1903-7, $800,000. The E. & T. H. R. R. loaned to the St. L. & S. F. Ry. in 1907-8, $721,492. The St. L. & S. F. R. R. loaned the C. & E. I. Ry. in 1912 and 1913, $430,000. All these sums were paid, except $100,000 loaned by the St. L. & S. F. Ry. to the C. & E. I. Ry. There being no physical connection between the St. L. & S. F. Ry. and the C. & E. I. Ry. when the former acquired control of the latter, trackage privileges were acquired over the C. V. & C. Ry. from Pana to East St. Louis Ill., 75 miles, the C. V. & C. Ry. double tracking the line and the C. & E. I. paying a rental of two per cent per annum on the appraised value of property used; cost of maintenance and operation of the joint line to be divided on a per-car basis. The gross operating revenue of the C. & E. I. Ry. increased from $6,000,000 in 1901 to $15,000,000 in 1912, operating expenses from $3,000,000 to $11,000,000 and operating ratio from 54.75 per cent to 80.19 per cent for 11 months of 1913. Notwithstanding increase in gross revenue in 1913 over 1901 of $9,121,425, only $385,370 remained as increased net result of operation. Yet the ratio of 21.58 per cent applied to maintenance of way in 1901 had decreased to 16.33 per cent in 1913. Proportion of funded debt interest to net earnings increased from 48.42 per cent to 101.40 per cent in the same period. Thus the net earnings for 1913 fell short of meeting the interest requirements by $40,916. That is, maintenance of the property was subordinated to payment of dividends. **Progress of the St. Louis & San Francisco R. R. Co. Receivership.**—The receivers originally appointed were B. L. Winchell, president of the St. L. & S. F. Ry. and Thos. H. West, Chairman of the Board of the St. Louis Union Trust Co. Winchell resigned and was succeeded by W. C. Nixon and W. B. Biddle, vice-presidents of the St. L. & S. F. Ry.; and West resigned and was succeeded by James W. Lusk. Increased earnings under the receivership to Nov. 30, 1913, amounted to $412,773, being the largest in the history of the property for a like period. The receivers have paid from current receipts $3,709,539 on debts contracted prior to their appointment, $1,354,904 of principal of equipment trust obligations, $2,981,144 on interest coupons, all rentals, taxes, and sinking-fund requirements, and have effected an increase of $141,000 in material and supplies. The amount of outstanding bonds has increased $574,000. Interest on funded debt has been paid at interest dates, with the following exceptions: principal and interest on $2,250,000 two-year notes due June 30, 1913; interest on St. L. & S. F. Ry. Co. & E. I. Ry. common stock trust certificates, due July 1, 1913; interest on St. L. & S. F.-N. O., T. & M. bonds, due Sept. 1, 1913; and interest on N. O. T. Co's bonds, due July 1, 1913. Payment of $2,880,000, O. & C. C. Ry. bonds, due Oct. 1, 1913, has been extended by agreement to Oct. 1, 1914. The receivers have borrowed money in but one instance, $400,000, all of which has been repaid. On petition of the receivers an order of court was issued Oct. 27, 1913, authorizing an issue of $10,000,000 of receivers' certificates. An order of court was entered Dec. 26, 1913, denying the petition of Wm. W. Niles for leave to sue the former officers and directors of company for violation of trust in sale of stock, notes and bonds of the St. L. B. & M. Ry. Co., and the receivers were directed to bring such suits. **Progress of Chicago and Eastern Illinois R. R. Co. Receivership.**—On May 27, 1913, Wm. J. Jackson and Edwin W. Winter were appointed receivers of this company. Results from operation of the property for June and July, 1913, compare favorably with those for June and July, 1912;

though the gain in gross revenues is more than offset by increases in operating expenses, due largely to expenditures necessitated by lack of proper maintenance in previous years. On June 3 the court authorized payment of $10,034, fines and costs for violations of the Interstate Commerce Act; on June 25, the Equitable Trust Co. of New York was authorized to file an intervening petition relative to certain trust agreements providing for the issuance of stock trust certificates by the St. L. & S. F. Ry., and on the same date the receivers were authorized to make repairs, betterments, additions and purchase of locomotives. The receivers were also authorized to issue $4,000,000 of receiver's certificates for payments of interest on railroad bonds, interest on equipment obligations, installments on equipment obligations, overdue vouchers and supply accounts. The certificates are dated July 1, 1913, payable in one year with interest at six per cent, payable semi-annually. The entire issue was taken by the Equitable Trust Co. at par, less 1½ per cent commission. The amount realized was $3,940,000, from which $2,735,825 was disbursed to Sept. 1, 1913. June 30, 1913, the Equitable Trust Co. loaned the receivers $725,000 on six per cent demand note, which has been paid from the proceeds of the receiver's certificates. **Securities of Railway and Bridge Companies Owned and Controlled by the St. Louis & San Francisco Railroad Company.**—The following is a list of securities of railroad and bridge companies owned by the St. L. & S. F. Ry., and of securities of companies owned by the St. L. & S. F. Ry., and of securities of companies controlled by the St. L. & S. F. Ry. Co. through ownership of stock of the K. C. F. S. & M. Ry. and the N. O. F. & M. R. R. The St. L. & S. F. R. R., through ownership of stock of the Kansas City, Fort Scott and Memphis Railway, and the New Orleans, Texas & Mexico Railroad, owned the following percentage of stocks, bonds and securities of the following railway, bridge and terminal companies:

Birmingham Belt Ry. Co.	100
Metropolitan Rapid Transit, Light & Power Co.	100
Birmingham Terminal Co.	16⅔
Kansas Southwestern Railway Co.	50
Intermittent Vacuum Pre-Cooling Co.	100
West Tulsa Belt Ry. Co.	100
Kansas City Terminal Ry. Co.	8⅓
New Orleans, Mobile & Chicago R. R. Co.	10
New Orleans, Mobile & Chicago R. R. Co.	30
Rio Grande Ry. Co.	100
Wichita Union Terminal Co.	25
Quanah, Acme & Pacific R. R. Co.	60
Brownsville Street & Interurban Ry.	100
Frisco Refrigerator Line	100
Brownwood North & South Ry. Co.	100
Brownwood North & South Ry. Co.	100
Fort Worth & Rio Grande Ry. Co.	100
Fort Worth & Rio Grande Ry. Co.	34.6
New Orleans, Texas & Mexico R. R. Co.	99.7
St. Louis, San Francisco & Texas Ry. Co.	100
St. Louis, San Francisco & Texas Ry. Co.	100
Chicago & Eastern Illinois R. R.	69
Chicago & Eastern Illinois R. R.	53
Kansas City, Fort Scott & Memphis Ry. Co.	100
Kansas City, Fort Scott & Memphis Ry. Co.	100
Kansas City, Memphis & Birmingham R. R. Co.	100
Kansas City, Memphis & Birmingham R. R. Co.	6.3
Paris & Great Northern R. R. Co.	100
Paris & Great Northern R. R. Co.	100
Memphis R. R. Terminal Co.	10
New Orleans R. R. & Terminal Co.	50
Terminal R. R. Assocation of St. Louis	6⅝
Cape Girardeau Northern Ry. Co.	1.1
Rock Island-Frisco Terminal Co.	40
New Iberia & Northern R. R. Co.	100
Iberia, St. Mary & Eastern R. R. Co.	100

Reorganization of the St. Louis & San Francisco Ry Co.—The St. L. & S. F. R. R. Co., successor to the St. L. & S. F. Ry. Co., began operations July 1, 1896, the old company having passed through a receivership because of default on the interest on certain mortgage bonds of 1891. The property was sold to the purchasing committee under foreclosure proceedings and an assessment of ten per cent made on about $8,000,000 of these bonds. Additional bonds representing $5,000,000 were purchased of the A. T. & S. F. Ry. committee. In return for a $1,000 bond and payment of assessment, the depositor was entitled to $140 preferred stock, $1,000 second preferred, and $1,800 common stock of the new company. The bondholders had the option to subscribe to an issue of four per cent bonds limited to $5,500,000, on basis of 67 per cent of holding of old bonds, and on payment of subscription to this issue, each bond was entitled to a bonus of $469 first preferred, and $1,206 common stock. The net result of depositing a $1,000 defaulted bond, paying the assessment thereon and subscribing $670 of the par value of the new bond issue, was that the owner was entitled to receive $670 in new bonds and $5,285 of the capital stock of the St. L. & S. F. R. R. Co. Capital obligations of the old company at the time of the receivership amounted to $68,746,726, of which $42,387,426 was

bonds and $26,359,300 was stock. The new company began operations with $80,974,438; $36,383,626 bonds, and $44,590,812 capital stock of an authorized issue of $50,000,000, that not issued being placed in the treasury. The defaulted issue of $11,494,800 bonds was canceled and a new issue of $5,500,000, interest on the other outstanding bonds of the old company, being assumed. Eliminating securities applied to the purchase of certain leased lines of the old company, there was an increase in capital of $9,809, 112, without an increase in mileage. But fixed charges were reduced from $2,234,122 to $1,994,330 per annum. **St. Louis & San Francisco Railroad Company Capital Stock.**—The capital stock, amounting to $50,000,000, of which $5,409,207 was placed in the company treasury, consisted of $29,000,000 common, $5,000,000 first preferred, and $16,000,000 second preferred. In March, 1913, an additional issue of $1,364,000 was placed in the treasury, and on May 27, 1913, the amount of its own capital stock owned by the St. L. & S. F. Ry. was $1,370,837. Out of 36,023 shares of common stock owned by the St. L. & S. F. Ry., 19,100 shares were exchanged at par with bondholders of the K. C. S. W. R. R., the K. M. Ry., and the St. L. & S. F. Ry. companies for their bonds, and 16,922 shares were exchanged for common stock of the R. I. Co. of N. J., and bonds of the C. R. I. & P. Ry. Of the first preferred, 86 shares were exchanged with bondholders of the St. L. & S. F. Ry.; and of the second preferred. 687 shares were exchanged with bondholders of the named companies, and 17,230 shares were sold at 70 to 11 firms and individuals. The discount, $516,900, was charged to profit and loss. These transactions disposed of all stock received by the St. L. & S. F. Ry. from the reorganization committee in 1896. **St. Louis & San Francisco R. R. Co. Funded Debt.**—The funded debt amounted on June 30, 1897, to $37,288,850, covering 1,145 miles of line outside of Texas, or an average of $32,566 per mile. On May 27, 1913, the debt, including $10,423,937 of equipment trusts, amounted to $244,003,958, covering 3,522 miles of line, an average of $69,268 per mile. Interest bearing debt had increased $209,715,108, or 554 per cent over 1897, while the owned mileage had increased 208 per cent, and the average per mile 112 per cent. To acquire the capital stocks of the C. & E. I. and the K. C. F. S. & M. Rys., the St. L. & S. F. Ry. had issued $45,648,250 of stock trust certificates. Excluding the $28,582,930 of the N. O. T. & M. Ry. division bonds, the St. L. & S. F. Ry.'s funded debt on May 27, 1913, amounted to $178,132,178, and its notes outstanding $5,413,765; a total increase in indebtedness of $183,545,944. Increase in capital expenditures for the same period aggregated $103,275,651, and discounts on the funded debt $28,828,362. Thus the fixed and floating debt obligations issued during the period were $5,793,680 in excess of expenditures. Cash expenditures for properties, betterments, securities of other companies, etc., were certified to the trustee under one of its mortgages, who thereupon delivered to it bonds as provided by the mortgage. The St. L. & S. F. Ry. in no case received par for securities thus obtained, the price ranging from 68 to 98. The St. L. & S. F. Ry. also received from the K. C. F. S & M. Ry. $14,185,000 of four per cent refunding bonds which it sold at prices ranging from 62½ to 90, the discount amounting to $3,172,948. Holdings of St. L. & S. F. Ry. funded debt securities held in Europe approximate $52,500,000; $46,500,000 of St. L. & S. F. Ry. general lien five per cent bonds, and $6,000,000 of St. L. & S. F.-N. O. T. & M. five per cent bonds. The former were marketed through Speyer & Co., the latter through Salomon & Co. These were sold at 78 and accrued interest and at 90. In addition to its funded debt liability, the St. L. & S. F. indorsed its guarantee on bonds aggregating over $50,000,000. **Chicago & Eastern Illinois R. R. Co. Capital Stock and Funded and Floating Debt.**—The capital stock and funded debt on June 30, 1900, aggregated $42,661,003, divided as follows: Common stock, $12,044,800; preferred, $7,696,600; bonds, $22,682,900; equipment trust notes, $236,703. Capital liabilities on May 27, 1913, aggregated $101,009,731, an increase of $58,348,728. On capital stock sold above par premiums were $495,000. Adding this to the increase in capital liabilities, the difference between that item and the amounts expended was $5,649,403. **General Consolidated and First Mortgage Five Per Cent Bonds.**—The last sale of these C. & E. I. Ry. bonds was on Jan. 6, 1913, when $258,000 par value were sold at 105 and accrued interest, less one-half per cent commission. Various sales were before made at from 105 to 124⅝. The profit from such sales was

$17,497. **Refunding and Improvement Mortgage Four Per Cent Gold Bonds.**—The last sale of these was on June 23, 1911, when $864,000 par value were sold at 80¼ and interest. Other bonds were sold prior thereto at from 75 to 92.53 and interest. **Purchase Money First Lien Five Per Cent Coal Bonds.**—Bonds in the sum of $4,506,000 were issued in 1912 for purchase of certain coal properties. Interim bonds par value $2,680,000 were delivered to Kuhn, Loeb & Co. at 89, the proceeds with interest amounting to $2,387,187. The same day the C. & E. I. Ry. gave its note for $300,000 and received that sum from Kuhn, Loeb & Co. Simultaneously a check was drawn on the National City Bank, in which the money was deposited to the order of Kuhn, Loeb & Co., for $292,812, the latter then making a check to the Central Trust Co., trustee under the mortgage, for $2,680,000, the transaction having the effect of concealing from the trustee the price at which the bonds were sold. At later dates bonds of par value of $525,000 and $136,000 were delivered to Kuhn, Loeb & Co. at 89 and interest, the C. & E. I. Ry. drawing checks to the order of the latter for the discount, in order that it might deposit with the trustee $661,000, par value of the bonds, again concealing the price at which the bonds were sold. **St. Louis & San Francisco Railroad Company. Discounts, Premiums, and Commissions.**—Discounts borne by the St. L. & S. F. Ry. and its subsidiary the K. C. F. S. & M. Ry., since it began its refunding operations in 1901 on bonds and notes other than short term notes, aggregate $30,900,181, discounts on securities of the St. L. & S. F. Ry. alone aggregating $28,828,362. Of the net amount of funded debt outstanding May 27, 1913, 12.05 per cent represented discounts and commissions. In addition $200,900 was paid to J. P. Morgan & Co. in 1903, to protect the latter from the effect of marketing an issue of bonds held by the Seligman syndicate. **Operated Mileage.**—The railroad acquired from the receivers of the St. L. & S. F. Ry. consisted of 1,046 miles of track, and this road also acquired from the reorganization committee the St. L. S. & A. Ry., 54 miles, and the K. C. & S. W. Ry. 62 miles, making a total mileage for 1896-97 of 1,162 miles. The total mileage operated May 27, 1913, was 4,741 miles, of which the St. L. & S. F. Ry. owned 3,523, leased 1,205, and had trackage rights over 13. The increased mileage was secured by the acquisition of 16 lines, the leasing of the K. C. F. S. & M. Ry. 919 miles, and the K. C. M. & B. Ry. 286 miles, and trackage rights over four lines. **Franchise and Property.**—The property investment of the St. L. & S. F. Ry., May 27, 1913, amounted to $193,923,092; including stocks and bonds of certain Northern Texas lines aggregating $6,667,000 par value. The latter is deducted for reporting purposes, leaving $187,256,092, of which $151,913,268 is credited to roads and $35,342,824 to equipment. **Maintenance of Way and Structures.**—The following amounts have been charged for maintenance of way and structures during the last five years.

Year.	Per Cent of Operating Expenses.	Amount.	Miles Operated.	Average Charge per Mile.
1909	20.01	$4,630,953.91	4,727	980
1910	20.22	5,430,256.33	4,726	1,149
1911	18.38	4,998,042.28	4,732	1,056
1912	17.56	4,666,946.81	4,742	984
1913 to May 27.	18.90	4,995,818.76	4,742	1,054

A progressive reduction in maintenance costs was effected notwithstanding extraordinary charges were passed to the maintenance account during 1913 on account of floods and revenues were increasing over previous years. Average expenditures for maintenance by railroads of the United States operating 243,433 miles of line on June 30, 1911, was $1,504 per mile. The sums expended by the St. L. & S. F. Ry. were evidently insufficient to prevent deterioration. **Maintenance of Equipment.**—Charges for this item have also decreased since 1910. The following table shows such charges for the past five years:

Year.	Per Cent.	Amount.	Locomotive and Car Miles.	Average Repair Cost per Locomotive and Car Mile.
1909 ...	18.93	$4,380,923.85	286,999,912	0.0153
1910 ...	21.04	5,649,817.61	312,245,502	.0181
1911 ...	20.01	5,440,990.12	316,792,656	.0172
1912 ...	19.52	5,187,655.85	312,497,279	.0166
1913 to May 27.	19.99	5,283,537.65	304,152,402	.0174

During this same period, operating ex-

penses increased from $35,619,712 in 1909 to $39,390,343 for 11 months in 1913, and value of equipment increased from $39,412,328 to $46,881,549. The number of units of equipment retired has also decreased yearly since 1906. Charges to profit and loss and to operating expenses on account of retirements decreased from $459,852 in 1906 to $134,954 in 1913. Since 1908, 28 locomotives have been set aside to be scrapped, but have not been scrapped because of the effect that action would have on operating expenses, the total involved in these locomotives being $174,465. **Contract with American Creosoting Company.** In 1907, the St. L. & S. F. Ry. contracted with the above company for the erection by the latter of two plants for treating ties by the creosoting process at Springfield, Mo., and Hugo, Okla., the creosoting company to treat ties for the St. L. & S. F. Ry. only, the latter agreeing to deliver all supplies free and 750,000 ties per annum, and to pay 28½c for each tie treated, and in certain cases up to 40c. The creosoting company was paid $861,173 for creosoting 2,744,254 ties, at an average rate of 31.35c per tie. These prices were extravagant as compared with prices paid by the A. T. & S. F. Ry. and M. K. & T. Ry., from 14c to 17½c in the former case, and 18.75c in the latter. The receivers of the St. L. & S. F. Ry. have secured the suspension of the creosoting contract. **Purchase of the Kansas City, Fort Scott & Memphis R. R. Co. by the Kansas City, Fort Scott & Memphis Ry. Co.**—By an agreement of June 29, 1901, the K. C. F. S. & M. R. R. Co. assets and liabilities were assumed by the newly organized K. C. F. S. & M. Ry. Co. The purchase price was $14,275,600, payable within 60 days to the Mercantile Trust Co. for payment to holders of $2,750,000 preferred stock at $150 per share, and $10,150,600 of common stock at $100 per share. The stock was to be surrendered to the railway company, which could make payments of the purchase price by delivery of the stock to the trust company. Arrangements were made whereby a syndicate undertook to pay the purchase price of the bulk of the stock to the trust company for account of the railway company, transfer the capital stock of the K. C. F. S. & M. Ry. Co. of Oklahoma to the railway company, and also transfer to it 29,427 shares of the capital stock of the K. C. M. & B. R. R. To finance this arrangement the railway company issued to the syndicate committee $11,650,000 of its refunding mortgage bonds, $13,510,000 of its preferred stock, and $15,000,000 of common stock. The St. L. & S. F. Ry. was to guarantee the mortgage bonds and issue $13,510,000 of its four per cent preferred stock trust certificates in exchange for the preferred stock of the railway. The committee was to give the stockholders of the St. L. & S. F. Ry. the right to subscribe for the mortgage bonds and preferred stock certificates, and to underwrite the subscription, which amounted to $19,795,770. The syndicate subscribed $14,266,203, and the balance was subscribed by the St. L. & S. F. Ry. stockholders. The committee was to receive $16,000,000 of the proceeds, a 2½ per cent commission, a profit of 10 per cent to certain members and 20 per cent to others, and expenses. The balance, $440,888, went to the St. L. & S. F. Ry. As a result of this transaction, the new company increased its operating mileage from 719 miles in 1900 to 850 miles in 1901. There was a total increase in funded debt of $13,737,510, against an increase in mileage of 131 miles. No dividends were ever paid by the new company, though it was leased to the St. L. & S. F. Ry. in 1901, under an agreement for annual dividends of four per cent on preferred stock. Organizing the new company was not a labor of love on the part of those composing the syndicate, the commissions received by them amounting to $494,894, and profits on subscriptions $1,783,207. **St. Louis, Brownsville & Mexico Ry. Co.—General Facts.**—Mr. Frank Andrews of Houston, Tex., was appointed receiver of the above company July 4, 1913. The company was organized as a Texas corporation in 1903, with a capital stock of $1,000,000 to operate a railroad from Brownsville to Sinton, Tex., with a branch to Star County, in all 192 miles. To further extend the railway to Houston, Tex., 209 miles, an additional $2,850,000 capital stock was authorized. A committee of five undertook the construction of the section from Robstown to Brownsville; after receiving over 90,000 acres of land and other donations, formed a syndicate to which the lands were turned over and which undertook to build a road and develop the land. The land deals, cash bonuses and syndicate exploitations resulted in a profit to the syndicate of $892.4[illegible]. The syndicate members contributed $3,980,999 toward the construction of the rail-

road. After the St. L. B. & M. issued securities amounting to $10,756,000, authorized by the Texas Railroad Commission, a contract was entered into by the St. Louis Union Trust Co. and the St. L. & S. F. Ry. for the purchase of these and other securities for $11,827,200 with interest. And on May 26, 1910, the St. L. & S. F. Ry. paid $12,122,897. The syndicate secured a profit of $3,011,929 from the entire transaction, the profit representing 75.66 per cent on the subscription of each syndicate member. The total amount spent by the syndicate in construction and equipping the St. L. B. & M. R. R. was $9,708,758. Under authority of the Texas Railway Commission the company issued $10,256,000 first mortgage six per cent bonds in 1909, and reduced its capital stock from $1,221,500 to $500,000. These securities were taken by the syndicate as the purchase price of the property and $200,000 in cash. On December 1, 1909, the St. L. & S. F. Ry. purchased these securities and others of the syndicate through the St. Louis Union Trust Co. for $11,827,200. In order to pay for part of these securities the St. L. & S. F. Ry. issued $50,000,000 of St. L. & S. F.-N. O. T. M. Ry. division bonds. The securities purchased with the proceeds of this issue, with others, were delivered to the trustee under the mortgage as additional security and charged to the N. O. T. & M. R. R. by the St. L. & S. F. Ry. as advances. **Capital Assets and Liabilities.**—The total cost of the St. L. B. & M. on June 30, 1913, was $12,701,822, covering 471 miles of owned line; an average of $24,353 per mile excluding equipment, or $26,910, including equipment stock and bonds outstanding was $12,679,105, and the funded debt $25,814 per mile. The funded debt per mile is less than the average of 15 other lines in Texas, while its interest charges are higher by $384.85 per mile. The total capital liabilities of the St. L. B. & M. Ry. on June 30, 1913, were $12,679,105, divided as follows: Capital stock, $500,000; funded debt, $12,147,105; equipment trust notes, $32,000. All of the securities except the last are owned by the N. O. T. M. Ry. The $500,000 capital stock and $10,256,000 of the mortgage bonds were purchased by the St. L. & S. F. Ry. for this company. In addition the St. L. B. & M. Ry. is indebted to the N. O. F. & M. Ry. $790,529 on demand notes. **Operation.**—The St. L. B. & M. Ry. has been unprofitable since 1909. The officers of the company and the St. L. & S. F. Ry. attribute this to (1) unsettled conditions in Mexico; (2) failure of crops on the line; (3) lack of refrigerator equipment; (4) glutted market conditions; (5) one-way loaded-car movement. But the most important cause has been the item of interest on capitalization. Gross earnings have increased from $207,288 for 1905 on 233.75 miles to $2,930,691 for 1913 on 517.74 miles, and the operating ratio has increased from 54.96 per cent to 79.94 per cent. The net operating income amounted to $92,633 for 1905 and $519,585 for 1913, while other income increased from $2,946 to $9,961. The sum of $204,224 was spent for hire of equipment, indicating that the equipment owned by the company was insufficient for its needs. During 1913 rents consumed $90,104 of the corporate income, $74,609 being for the use of terminal facilities and the balance for use of tracks of the T. & M., the G. C. & S. F., and the R. G. railways. Interest on the funded debt for the fiscal year 1913 amounted to $706,052. The interest charge was $1,496 per operated mile, while the net revenue was $1,135.77 per mile, which fact alone would have made insolvency certain. The principal difficulty with this company has been its inability to meet the interest on its bonds. Its total capitalization is $12,670,105, and its capital stock only $500,000. Practically all of its interest bearing debt of $12,179,105 bears interest at six per cent, and the ratio of interest-bearing securities to the total of securities is 96.06 per cent. **Progress of Receivership.**—By a court order of Nov. 17, 1913, the receiver of the St. L. B. & M. Ry. was authorized to borrow $750,000 on six per cent receiver's certificates, for improvement, renewals, repairs and betterments of the property. Accordingly $250,000 of such certificates have been sold to the receiver of the N. O. T. & M. Ry. at 98.26 per cent. Although the proceeds have been largely expended, recent floods in the Guadalupe Valley have so damaged the railway that it is estimated $1,196,715 more will be required. The receiver has collected $243,837 applicable to transactions prior to the receivership, while his disbursements for prior indebtedness amounts to $507,395. Cash in bank on November 30 to his credit approximated $350,000. Current and deferred liabilities on October 31 amounted to $638,471. **New Orleans, Texas & Mex-**

ico Railroad Co.—This road was incorporated in Louisiana in 1905 as the C. S. N. O. & P. R. R. Co., and the name changed in 1910 by vote of the stockholders. The original stock was $5,000,000. In October, 1905, a contract was made with the Gulf Construction Co. of Delaware for construction of a line from Port Allen to DeQuincy, La., and a branch from Sour Lake to Humble, La., and an issue of $12,000,000, 20-year, 4½ per cent bonds authorized. $7,500,000 was to be from time to time delivered to the construction company, and capital stock representing $5,000,000. In 1906 the contract was cancelled, the C. S. N. O. & P. Ry. assuming the liabilities of the construction company. The president, secretary and assistant secretary of the construction company were officials of the St. L. & S. F. Ry. During the 8 months of its existence the construction company obtained from the C. S. N. O. & P. Ry. $2,200,000 in cash, and profited $375,000 by the transaction. Two St. L. & S. F. Ry. officials profited to the extent of $36,750. In 1906 an agreement was effected between the St. L. & S. F. Ry. and the C. S. N. O. & P. Ry., by which the latter was to reduce its capital stock from $12,000,000 to $2,000,000, selling all but $6,000 of such stock and in addition $8,500,000 of its first mortgage bonds to the St. L. & S. F. Ry. for $7,077,000. From the money so obtained, the C. S. N. O. & P. Ry. was to pay the construction company the $2,200,000 mentioned. To finance this move the St. L. & S. F. Ry. issued $7,500,000 five-year five per cent notes, which were sold at 94.36. The St. L. & S. F. Ry. leased the property in 1907 for 999 years, but the lease was subsequently canceled. Prior to March 1, 1910, advances were made by the St. L. & S. F. R. R. for account of the C. S. N. O. & P. Ry. of $25,827,677. Cash was advanced from the sale of $7,500,000 of St. L. & S. F. Ry. Co. notes. To reimburse itself for these advances, this road authorized an issue of $50,000,000 of St. L. & S. F.-N. O. T. M. division first mortgage 30-year bonds, of which $26,000,000 were authenticated and delivered to the St. L. & S. F. Ry. in reimbursement for the advances. Subsequently, $6,587,074 was advanced to the N. O. T. & M. Ry., successor to the C. S. N. O. & P. Ry., on notes, of which $4,229,185 remained unpaid on May 31, 1913. Additional advances were made aggregating over $1,000,000, of which $657,304 remained unpaid on May 31, 1913. The N. O. T. & M. Ry. acted as distributor of funds advanced by the St. L. B. & M., the B. S. L. & W., and the L. & S. F. Ry. and on May 31, 1913, carried in bills receivable due from the St. O. & N. W. Rys., $1,988,182. The N. O. T. & M. consists of a main line, De Quincy to Anchorage, La., 137 miles, and branches and trackage rights, bringing the total mileage operated May 31, 1913, up to 285.87 miles. The capitalization consisted of $2,000,000 capital stock, $28,582,930 mortgage bonds, and $1,887,561 equipment trust bonds; in addition to which it owed the St. L. & S. F. Ry. $4,886,489. Capital assets at the same period amounted to $32,946,816. The operation of the road showed a deficit for 1910 and 1911 of $751,590, and for 1912 and 1913 to May 31 of $817,267. Mr. J. D. O'Keefe, appointed receiver July 5, 1913, procured an order of court authorizing an issue of $2,000,000 one-year six per cent receiver's certificates. Certificates for $850,000 were sold at a discount of two per cent and interest. The receiver has received $213,981 due on transactions prior to the receivership, of which $193,686 has been disbursed. Other South Texas Lines.— The St. L. & S. F. Ry. controls the B. S. L. & W. R. R., the O. & N. W. R. R. and the S. L. B. & M. R. R. through the medium of the N. O. T. & M. R. R. These lines form a through line between New Orleans, La., and Mexico, via Brownsville, Tex. The outstanding securities of the B. S. L. & W. were: stock $85,000, and bonds $2,007,250; and of the O. & N. W. Ry., stock $35,000, and bonds $1,066,946. All of the stock of both, except qualifying directors' shares, and all the bonds are owned by the N. O. T. & M. R. R., and the two companies are also indebted to that company nearly $2,000,000. Both lines have been operated at a loss, in 1912 the deficit of the B. S. L. & W. Ry. being $185,834, and of the O. & N. W. Ry. $107,213. In the same year. revenue per mile on the B. S. L. & W. Ry. was $6,041, and on the O. & N. W. Ry., $2,239. These two properties are in the hands of Receiver Frank Andrews. North Texas Lines.—Through direct ownership of securities, the St. L. & S. F. controls the P. & G. N., the St. L. & S. F. & T., the F. W. & R. G. and the B. N. & S. railways. The operated mileage of these lines is, respectively, 16, 243, 235 and 17 miles. The P. & G. N. Ry. has outstanding, stock $500,000 and

bonds $339,000; the St. L. S. F. & T. Ry.: stock $804,000, and bonds $1,188,000; the F. W. & R. G. Ry.: stock $2,928,300, and bonds $4,467,000, and the B. N. & S. Ry., stock $225,000, and bonds $91,000. With the exception of the P. & G. N. Ry., the operation of these lines has not been profitable, and in case of the St. L. S. F. & T. Ry. has been accompanied by heavy deficitis for the past 6 years. The St. L. & S. F. Ry. has assisted this company by permitting it to retain traffic balances due the St. L. & S. F. Ry. On this account the St. L. & S. F. Ry. holds the note of the St. L. S. F. & T. Ry. for $1,142,318, dated March 1, 1910, since when balances aggregating $1,053,852 have accumulated and remain unpaid. The gross operating revenues per mile of road for 1912 were: for the P. & G. N. Ry., $14,702; for the St. L. S. F. & T. Ry., $5,354; for the F. W. & R. G. Ry., $3,915; and for the B. N. & S. Ry., $353. St. Louis & San Francisco Railroad Investigation, 29 I. C. C. 139.

(d) In 1905 the C. M. & St. P. Ry. Co. commenced the construction of a subsidiary line, the Chicago, Milwaukee & Puget Sound Ry., from a point in South Dakota on the Missouri River to Seattle. The Puget Sound Line was completed in 1909, the St. Paul line advancing about $82,000,000 toward its construction. In its income accounts for 1910, the St. Paul company included all interest, rents and revenues assignable to the period prior to July 1, 1909, and decreased its operating expense accounts by credits on account of salvage from cars destroyed previous to 1907, thus overstating its income by more than $5,000,000. This led to an apparent falling off in revenue in the succeeding years, which the company falsely attributed to "great increase in cost of labor." It also entered a charge of only one per cent per annum for depreciation of equipment, thus inflating its net income. The Puget Sound company, on the other hand, resorted to a variety of expedients to overstate its income. In the period covered by its first report, expenditures for construction were made, while expenditures for operation were also going on, and in accounting for these two classes of expenditures, large amounts were included in the cost of construction which should have been entered as expenses of operation. The net income was also overstated by including in cost of construction interest accruing after the road had been opened to public service, revenues were overstated by including charges for transportation of construction material at rates higher than those exacted, and no charges whatever were made for depreciation of material. Thus the company was enabled to show a fictitious net income of $2,255,440 for the first year's operations. In its first report it showed an investment in road and equipment of $100,000,000 in excess of the facts. HELD, that the showing presents a condition of affairs not creditable to the St. Paul lines or to their officers. St. Paul and Puget Sound Accounts, 29 I. C. C. 508.

(dd) The Commission reported to the Senate the result of its investigation, conducted pursuant to the Senate's resolution of July 10, 1913, requesting it to investigate and report the facts and circumstances connected with the proposed issue by the N. Y. C. & H. R. R. R. Co. of 4 per cent mortgage bonds for $167,102,400, to refund 3½ per cent bonds existing against that railroad and the stock of the L. S. & M. C. railways. The sum mentioned constitutes the total of the N. Y. C. R. R.'s Lake Shore collateral bonds for $90,578,400, issued in payment for 90 per cent of the Lake Shore stock at $200 per share; its Michigan Central collateral bonds for $19,336,000 issued in payment for 90 per cent of Michigan Central stock at $114 per share; its debenture bonds for $48,000,000; and debenture bonds for $9,188,000. The collateral bonds bore interest at 3½ per cent; the debenture bonds at 4 per cent. Par value of the stock purchased was $100 a share. The L. S. Ry. collaterals are secured by pledge of the L. S. Ry. stock and the M. C. R. R. collaterals by pledge of M. C. R. R. stock. None of the bonds were secured by mortgage, but the N. Y. C. R. R. was bound to secure them in any future mortgage placed on its property, and also not to consolidate the L. S. Ry. with the N. Y. C. R. R. without the consent of three-fourths of the holders of L. S. Ry. collaterals, nor to vote L. S. Ry. stock for any increase in L. S. Ry. capital stock, which is $50,000,000. Similar covenants were contained in the indenture under which the N. Y. C.'s M. C. R. R. collaterals were issued. The N. Y. C. R. R. extends New York to Buffalo, and the L. S. Ry. from Buffalo to Chicago, and the former desires to consolidate the two in the interest of through traffic and to secure simplicity and strength in financing the

two companies. The L. S. Ry. owns all of the stock of the T. & O. C. Ry., the C. I. & S. R. R. and the J. F. & C. Ry., and controlling interests in the P. & L. E. R. R. and the N. Y. C. & St. L. R. R. The capital stock and bonded debt of the companies within the proposed consolidation are as follows:

Company	Stock	Bonds
N. Y. C. & H. R. R. R. Co.	$225,581,100	$291,211,400
L. S. & M. S. Ry. Co.	50,000,000	150,000,000
P. & L. E. R. R. Co.	29,988,000	4,000.000
T. & O. C. Ry. Co.	10,208,000	8,500,000
C., I. & S. R. R. Co.	20,000,000	20,000,000
J., F. & C. R. R. Co.	3,000,000	11,000,000

The $167,102,400 of bonds referred to in the Senate resolution is included in the $291,211,400 of N. Y. C. R. R. bonds. The N. Y. C. R. R. proposes to provide for the issuance or consolidation of bonds, secured by mortgage on the combined properties, to refund the bonded debt of the two companies and for future capital needs of the consolidated company. It is proposed to secure the $167,102,400 by mortgage on the property of the N. Y. C. R. R., and on consolidation, by mortgage on the property of the L. S. Ry. The mortgage restricts the issuance of bonds thereunder to the sum mentioned, and provides that after consolidation the N. Y. C. R. R. may issue 4 per cent bonds in exchange for all or any part of the present bonds. The final bonds are to be secured by a N. Y. C. R. R. general refunding and improvement mortgage, which will authorize the issuance of bonds sufficient to refund all indebtedness of the consolidated company and provide for such future bonds as may be required, at no time to exceed three times the capital stock; additional bonds beyond $500,000,000 to be sold only to the extent of 80 per cent of needed improvements. With a requirement of $350,000,000 within the next ten years for improvements, the debt of the consolidated company will be increased to more than $800,000,000, and unless increased in the meantime there would be then outstanding $275,581,100 of capital stock. In May, 1913, the N. Y. C. R. R., to secure consent of holders of three-fourths of L. S. Ry. collateral bonds, offered to extend to them the opportunity, following consolidation, of exchanging 3½ per cent bonds for 4 per cent consolidation mortgage bonds, which would have added, for a period of 84 years, $452,892 to fixed charges if the entire issue were exchanged, the increase in interest rate to apply only as to the $90,578,400 of L. S. Ry. collateral bonds. The consolidation would result in a saving of perhaps $325,000 per annum in office expenses, and a saving of $200,000 under the federal income tax law, owing to elimination of present triplicate taxation of L. S. Ry. subsidiaries' dividends. The mortgages referred to have been approved by the New York and New Jersey state commissions, and leave granted to issue $70,000,000 of bonds under the refunding and improvement mortgage. Certain N. Y. C. R. R. stockholders objected to the proposed consolidation as in violation of the New York statutes and of the Sherman anti-trust act. OPINION. The Commission believes that from the standpoint of economy in operation and facility in financing the two companies the consolidation is warranted, and the proposed arrangements would involve no violation of any federal statute. The exchange of the 3½ per cent L. S. Ry. collateral bonds for 4 per cent consolidation mortgage bonds is regarded as a necessary step in affecting the consolidation. Proposed Bond Issue by N. Y. C. & H. R. R. R. Co., 30 I. C. C. 147.

(e) Where a railroad meets with misfortune in buying up the securities of another line, the burden should be borne by its stockholders, and not by the shipping public. The Five Per Cent Rate Case, 31 I. C. C. 351, 422.

(f) Investors in railroad properties are entitled to share in the general prosperity and to enjoy the just rewards of their foresight and wisdom, so long as the rates exacted are reasonable. It is not only consistent with a national policy that invites the private ownership of railroads that there should be a liberal return on a particular railroad investment, when the property has been wisely planned and honestly constructed and is efficiently managed but the full development of that policy, as well as justice, requires that such a return should be made. The public interest requires not only the adequate maintenance of existing railroads, but a constant increase of our transportation facilities to

keep pace with the growth and requirements of our commerce. If, however, that development is to be accomplished with private capital, in conformity with our traditions, the facilities will not be provided except under such a system of regulation as will reasonably permit a fair return on the money invested. The public owes to the private owners of these properties, when well located and managed, the full opportunity to earn a fair return on the investment; and the carriers owe to the public an efficient service at reasonable rates. The Five Per Cent Rate Case, 31 I. C. C. 351, 359.

(g) Congress, by joint resolution of March 7, 1906, as amended by a resolution of March 21, 1906, instructed the Commission to make examination into the subject of railroad discriminations and monopolies in coal and oil, and report. The specific matters upon which report was to be made are stated at the beginning of each of the numbered subdivisions below. **Report of the Commission—General Statement.**—The Illinois coal region covers 37,000 square miles and is variously estimated to contain from 140 to 240 billion tons of coal, less than 1 per cent of which has been exhausted; but much is not available under present conditions. In 1912 the total output was 57,500,000 tons, 51,500,000 of which was shipped principally to Chicago, St. Louis and points north, northwest and west. Fifteen years ago most of the coal belonged to the owners of the land. Now the bulk of available coal is owned by mining, railroad and industrial companies, several railroads owning from 20,000 to 40,000 acres. **(a) Extent to Which Interstate Railroads Transport Coal Controlled by Them Over Their Own Lines.**—The Atchison, Topeka & Santa Fe Ry. Co. owns all the bonds of the Toluca Coal Co., but has no interest in its stock. The coal company mined 257,473 tons in 1912, 71 per cent of which it sold to the A. T. & S. F. Ry. The C. & N. W. Ry. owns all the stock of the Superior Coal Co. and the Macoupin County Ry. The former owns 45,000 acres of coal, on which it operates three mines, served by the latter. They produce 2,000,000 tons per annum, 90 per cent of which is sold to the C. & N. W. Ry. The C. I. & L. Ry. owns all the stock of the Chicago & Indianapolis Coal Co. except qualifying directors' shares. The coal company owned 3,400 acres of coal land, leased to the Monon Coal Co., 25 per cent of whose stock is owned by the C. I. & L. Ry. The Monon company acquired five other mines on its lines, the product of all of which was sold largely to industries located on the line, it being the plan of the railway to control as much of this commercial business as possible. The M. P. Ry. owned practically all the stock of the St. L. I. M. & S. Ry., and the latter practically all the outstanding bonds of the Western Coal & Mining Co. The latter owns 9,500 acres of coal lands, and sells 93 per cent of its output to the carriers. These carriers also control 20 per cent of the stock of the Union Fuel Co. The C. M. & St. P. Ry. owns all the capital stock of the St. Paul Coal Co., which owns and leases 30,884 acres of Illinois coal land, producing 659,234 tons per annum, 85.3 per cent of which is sold to the C. M. & St. P. Ry.; and also the capital stock of the Braceville Coal Co., which owns 3,000 acres of coal in Illinois. The I. C. R. R. Co. owned the entire stock of the Madison Coal Co., which owned and leased 24,103 acres with mines producing 1,629,324 tons per annum, 99.18 per cent sold to the I. C. R. R. Co. The C. R. I. & P. Ry. owned all the stock of the Coal Valley Mining Co., which owned 400 acres of coal lands and mines producing 377,400 tons annually, 69.5 per cent of which was sold to the C. R. I. & P. Ry. The latter also owned a controlling interest in the Consolidated Indiana Coal Co., owning 20,000 acres of coal land, with mines producing 1,630,261 tons per annum, 28.4 per cent of which was sold to the C. R. I. & P. Ry. and the balance commercially. The C. & E. I. R. R. owned all the stock of the Brazil Block Coal Co., which owned 2,910 acres of Indiana coal land. The C. & E. I. also owned all the stock of the West Jackson Hill Coal Mining & Transportation Co., which in 1912 sold the railroad company 3,025 acres of coal land. The Illinois Traction Co. owned the stock of the Illinois Securities Co., which in turn had a controlling interest in the Danville Consumers Coal Co. and Kerns-Donewald Coal Co. The Van. R. R. Co. was controlled by the Penn. R. R., which also owned the stock of the Granite Improvement Co., which in turn owned the stock of the Vandalia Mineral Co. The latter loaned money, secured on notes endorsed by the Van. R. R. Co., to the Lumaghi Coal Co., which purchased 9,733 acres of coal land with the money, which was placed in trust with the Mineral company to secure the loan. It was stipu-

lated that all coal mined (approximately by subsidiaries of the U. P. R. R., which 150,000,000 tons) should be shipped over the Van. Ry. Co. While the C. & A. R. R. does not own any Illinois coal lands, it is indirectly interested in coal acquired owns the bulk of the preferred stock of the C. & A. R. R. The U. P. R. R. owned all the stock and outstanding bonds of the Union Pacific Coal Co., which in turn owned all the stock of the Illinois Union Coal Co. The latter had taken options on 25,000 acres of coal lands along the line of the C. & A. R. R., to furnish additional tonnage for this road. (b) **Coal Lands Controlled by Interstate Railroads.**—The C. & E. I. R. R. owned and leased 42,053 acres of coal lands in Illinois and Indiana, all but 628 acres of which was purchased in 1912. Of this, 16,500 acres had been leased to mining companies on 30 year terms, the C. & E. I. R. R. being given the right to demand 50 per cent of the output. The C. C. C. & St. L. Ry. had purchased 36,500 acres of Illinois coal land, and contracted for some 60,000 acres more. Of that purchased, 4,700 acres had been leased on royalty basis. Purchases were made partly to protect the future fuel supply of the N. Y. C. Lines and partly to secure those lines additional tonnage. The C. B. & Q. owned about 30,851 acres of undeveloped Illinois coal lands. (b) **Interest of Railroad Officials in Coal Companies.**—Thomas Hubbard, chairman of the board of directors of the T. St. L. & W. Ry., owned $156,100 of the $1,060,000 stock of the Shoal Creek Coal Co., which owned 14,000 acres of coal lands, producing 445,875 tons of coal, 46 per cent of which was sold to the T. St. L. & W. R. R., the carrier paying 7c more per ton than coal could be secured for elsewhere. R. Fitzgerald, president of the Chicago Junction Ry. Co., owned the stock of the Grant Coal Mining Co. The mining company had never sold coal to the C. J. Ry. Co. The Wabash R. R. stock is owned largely by the Gould family and the Russell Sage estate, also considerable owners in the Consolidated Coal Co. of St. Louis. The latter owned and leased about 29,561 acres of coal lands in Illinois, its mines producing in 1912 177,549 tons of coal, 18½ per cent of which was sold to the Wabash. O. L. Garrison, stockholder in the M. P. Ry. and director in the St. L. I. M. & S. Ry., was president of the Big Muddy Coal & Iron Co., which owned and leased 9,772 acres of Illinois coal lands with mines producing in 1912 about 1,173,000 tons of coal, 23½ per cent of which was sold to the M. P. and St. L. I. M. & S. lines. Three traffic officials of the S. Ry. Co. owned small blocks of stock in the Southern Coal & Mining Co., whose mines produced during 1912 about 1,035,000 tons of coal, of which the S. Ry. purchased 10 per cent. E. C. Cramer, district attorney of the B. & O. S. W. Ry., owned fifteen shares in the Breese Trenton Mining Co. W. C. Brown and other officials of the N. Y. C. Lines had been active in the promotion of two companies operating in Saline County, Illinois—the Saline Coal Co. and O'Gara Coal Co., and had owned much of their stock, but most of them had disposed of their holdings. **Monopolies, Combinations and Conspiracies in Restraint of Trade in Coal and Oil.**—Subsidiaries of the U. S. Steel Corp., owning the capital stocks of the C. L. S. & E. Ry. and E. J. & E. Ry., had acquired 63,993 acres of coal land and mineral rights in Illinois and Indiana. Under our agreement with the C. & E. I. R. R., the E. J. & E. R. R. moved traffic by its own power from points on the C. & E. I. R. R. to steel plant destinations on its own rails on rates filed with the Commission, the C. & E. I. R. R. publishing like rates between the same points. For instance, from Westville, Ill., via Chicago Heights to Gary, Ind., in the former case the E. J. & E. R. R. paid a trackage charge of $1 per train-mile; and in the latter case it received from the 74c rate 30c for the 25-mile haul from Chicago Heights, the C. & E. I. R. R. receiving 44c for the 107-mile haul to that point. The C. & E. I. R. R. made less by this arrangement than if it handled the business over its own rails, and consequently contributed to the benefit accruing indirectly to the steel companies. **Effect on Independent Operators and General Public.**—One evil likely to arise from the interest of railroads in coal properties is discrimination in purchases of coal for the carrier's own use, by taking a maximum tonnage from the independent operator when commercial business was brisk, and from the associated operator when business was slack. But a greater evil lies in the fact that the independent operator in paying freight charges parts with his money permanently, while in the case of the associated operator such payment merely results in a transfer from one treasury to another of the same interest. For instance, the Mer-

chants' & Manufacturers' Investment Co. owned the capital stock of the St. L. T. & E. Ry. and of the Donk Bros. Coal & Coke Co. Eighty per cent of the carrier's tonnage was furnished by the coke company, and the bulk of the remainder, consisting of anthracite from the east, was turned over to the St. L. T. & E. Ry. at Edwardsville, receiving a division of 12½c for 18 miles, instead of being moved by the T. St. L. & W. R. R. through to East St. Louis. Most of the anthracite was consigned to the coke company, which compelled the division. The profits of the St. L. T. & E. R. R. were 39 per cent per annum. The St. L. & O'F. Ry., the St. L. & O'F. Coal Co. and the W. Anthracite Coal & Coke Co. were interrelated through a common control of stock—58 per cent of the tonnage carried belonging to the coke company. In 1912 its income account showed a surplus of $74,237 after paying a dividen of 10 per cent. The Illinois Co. owned controlling interests in the L. & M. Ry. and the Mt. Olive & Staunton Coal Co. Eighty-nine and one-half per cent of the carrier's tonnage was furnished by the coal company. The S. T. R. R. engaged in terminal switching at Springfield, Ill., was owned by the same interests which owned the Jones & Adams Coal Co., which operates a mine on the line of the S. T. R. R. The C. & I. M. R. R. is controlled by the Commonwealth Edison Co. and Peabody Coal Co. through joint ownership of stock. The Edison Co. and F. S. Peabody control the Illinois Midland Coal Co., which operates mines with an output of over 500,000 tons per annum. The C. Z. & G. R. R. Co. was an industrial railway, owned by Joseph Leiter and served only the mine of the Zeigler Coal Co., owned by the L. Z. Leiter estate. Its commercial coal shipments aggregate 400,000 tons per annum. Car Supply and Distribution.—Practically all Illinois roads had some definite plan of handling car-shortage situations, but the plans were not uniform on the several roads. Mines were generally served on the basis of commercial capacity, which, if fair methods of determining relative mine capacity was used, was a reasonably equitable basis for rating, but such methods had not always been used. When the carriers adjust their rules governing ratings and distribution in accordance with In re Irregularities in Mine Ratings, 25 I. C. C. 286, and Traer v. C. & A. R. R. Co., 13 I. C. C. 451, many irregularities will be eliminated. The A. T. & S. F. Ry. and C. T. H. & S. E. Ry. had no published rules governing distribution. All mines on the C. & N. W. Ry. and on the C. I. & L. Ry. belonging to one company, no question of equitable distribution arose. The M. P. Ry. and St. L. I. M. & S. Ry. counted against the mines all classes of equipment except closed cars, cars for company fuel being given the preference, a privilege also provided for by the rules of the C. M. & St. P. Ry. The I. C. R. R. is the largest coal carrying road in Illinois. As a result of the ruling of the Commission, In re Irregularities in Mine Ratings, 25 I. C. C. 286, that all mines on its tracks be rated on an hourly production basis, its regulations were revised, effective Jan. 2, 1913. On the C. R. I. & P. Ry. the car dispatcher distributed cars among the mines in proportion to the number loaded by each during the preceding thirty days; while on the C. & E. I. R. R. mines were given a daily rating, based, however, on monthly shipments. The C. C. C. & St. L. Ry. did not count company coal, foreign and private cars against mine ratings; and the V. R. R. determined the rating by taking the average output of each mine on days in the calendar month when it received a full supply of cars and operated without interruption. The C. B. & Q. R. R. took the average loading of each mine for ten consecutive days when the mine operated full time, adding 20 per cent for expansion. On the C. & A. R. R. all available equipment, including company fuel, private and foreign-consigned cars, was placed at the mines to which billed, but counted against these ratings. Neither the Wabash R. R. nor the L. & M. Ry. had any fixed rules of car distribution. On the S. Ry. cars were distributed according to commercial and physical capacity after deducting the number needed for company fuel. On the B. & O. S. W. Ry. ratings were based on highest average daily shipment of all mines of an operator for one month during the preceding period of full car supply. The E. J. & E. R. R. had not been troubled with car shortage for some years. The C. P. & St. L. Ry. and T. P. & W. Ry. distributed on a percentage plan, based on the actual minimum output under normal conditions. On the M. & St. L. Ry. all cars, including company fuel, private, and foreign consigned, were counted against the mines receiving them. The St. L. & B. E. Ry. had

always been able to supply requirements. On the E. St. L. & S. Ry. mines were supplied with cars on basis of relative capacity, while the L. & N. R. R. rated mines according to their actual daily loading capacity. **Remedy for Evils.**—The Commission believed it important that the public business of transportation be clearly separated from private business, that railroads be prohibited from furnishing, directly or indirectly, capital or loans to private enterprises; that they be prohibited from extending the use of their credit for the benefit of private individuals or companies; and that the commodities clause be enforced and extended to all traffic. **Harrisburg Coal Districts.**—This, the principal coal producing area in southern Illinois, is traversed by the C. C. C. & St. L. Ry., and served to a limited extent by the I. C. R. R. and the L. & N. R. R. The field produced from 300 to 500 cars of coal daily. **Big Four Coal Lands.**—With the rebuilding of the Cairo division of the C. C. C. & St. L. R. R. to develop the Harrisburg district, that carrier purchased about 23,000 acres of coal lands and mineral rights in that locality. The plan originated with W. C. Brown, vice-president at Chicago, who placed S. W. McCune, a personal acquaintance, and C. P. Hewitt, his brother-in-law, in charge of the drilling tests. The latter was given a commission of $5 per acre on lands purchased, which he divided with McCune, each earning about $25,000 per year by the arrangement, besides which, by false vouchers and other devices, pilfering the funds of the C. C. C. & St. L. R. R. in a number of ways. **Saline County Coal Co.**—This company, with the O'Gara Coal Co., the main operators in the Harrisburg district, was formed in 1907 as successor to the Davenport Coal Co. The Davenport stock, originally $25,000, was bought up by Brown, McCune, Hewitt and C. E. Schaff, and so manipulated that on an investment of less than $75,000 they realized $353,125. Though Brown's holdings were small at the time of the hearing, he had from the first been intimately associated with the OGara Coal Co. through relatives and friends. T. J. O'Gara organized this company with the assistance of Brown, who interested James Kerr and J. B. Russell, eastern capitalists. Kerr and Russell underwrote $1,000,000 of bonds and Brown $500,000. Brown received $150,000 in stock for his services in promoting the enterprise. He disposed of all of his holdings prior to 1907. Various N. Y. C. officers subscribed for bonds underwritten by Brown, aggregating $197,500, while another subscrined for $100,000 underwritten by Kerr. While with but two exceptions N. Y. C. officials had no financial interest in securities of the coal company at the time of hearing, that company had from the time it began shipping coal been a preferred institution on the N. Y. C. Lines. As showing this, the N. Y. C. Lines permitted freight charges to accumulate to the extent of $500,000, advanced the O'Gara company large sums on poor security, prepaid its bills for fuel coal, extended credit on freight charges without interest or security, protected its contracts when it was temporarily short of coal, solicited business for the coal company, paid it more than the market price for fuel coal, permitted the use of false point of origin on billing to deceive the coal company's customers as to origin of coal, permitted false billing as to destination, that, by cutting the N. Y. C. division of the through rate, the coal company might compete with operators shipping on lower freight rates, and gave the O'Gara Co. a rebate of $60,000. **Tentative Plans of Consolidation.**—The consolidation of all coal properties in the Harrisburg district has been contemplated, the plan being for the Chicago & Harrisburg Coal Co., owned by the C. C. C. & St. L. R. R., to issue bonds guaranteed by the latter, and purchase its coal lands and the Saline County Coal Co. and O'Gara Coal Co. mines and lands. This is a use of railroad credit for the private ends of favored individuals, deserving the severest condemnation. Coal and Oil Investigation, 31 I. C. C. 193.

(h) No public service corporation may rightfully use corporate funds to promote a political cause or support a political candidate or party. A corporation as such has no political principles to maintain, no political candidates to support. The revenues of a public service corporation are for the most part derived from the exercise of the right delegated to it by the sovereign power to tax the public by fixed rates established in accordance with law. Shippers and the public may be presumed to be divided politically. Corporate revenue derived from men of one political conviction cannot be used to support the fortunes of a

candidate or party of contrary political principles and besides, corporate funds cannot be used for other than corporate purposes. The state itself may not use public funds for purposes other than those prescribed by law; and no creature of the state can assert power of which the state itself is devoid, to use money derived from a tax on shippers and travelers to promote the interests of any political party. Financial Investigation of the N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 61.

(i) The practice of one man serving on many boards of directors cannot be too strongly condemned. He may be thoroughly honest in his relations with each corporation, but it is not practicable for him to give the stockholders of each the full benefit of his ability and energy, when he can afford only a small fraction thereof to each. A director should be an active, not passive, force. He should understand the affairs of the corporation to which he gives the prestige of his name, at least to the extent of knowing the integrity of its designs and the absence of law-breaking methods in its operation, and he should not accept positions which he cannot so fill. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 66.

(j) The use of dummy individuals and dummy devices are but feeble and futile devices, and the use of them by a railway company indicates a low state of financial morality. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 60.

(k) In compliance with the resolution of the Senate of Feb. 7, 1914, the Commission made its report on the financial transactions of the N. Y. N. H. & H. R. R. Co., as to what became of its funds invested in various enterprises as mentioned in the New England Investigation, 27 I. C. C. 560, the liability of its officers to criminal prosecution therefor, whether such funds could be recovered under existing law, and what legislation was necessary to prevent a recurrence of similar transactions. The Commission experienced great difficulty in making the investigation, but the evidence disclosed that the company had over 300 subsidiary corporations, largely created to circumvent the law and that the management of the company had constituted one of the most glaring instances of maladministration in the history of American railroading. In 1903 its capitalization was $93,000,000, in 1913 it was $417,000,000, and $204,000,000 of the increase had been expended in operations outside its railroad sphere. By this means it had acquired a monopoly of competing steamship lines and trolley systems and practically monopolized the freight and passenger business in five states. **The New York, Westchester & Boston Ry. Co.**—The securities of this road, only 18.03 miles long and paralleling the N. Y. N. H. & H. R. R., were purchased without the knowledge of the board of directors and the line built at a cost of $36,434,173.25. The validity of the franchise being in question, $1,524,072.77 more was expended for corruption purposes, and covered by transfer to the N. Y. N. H. & H. R. R. of 30,431 worthless shares of the N. Y. W. & B. R. R. This line when completed constituted a drain on the N. Y. N. H. & H. R. R. to the extent of $1,250,000 per annum. HELD, that the blame rested squarely on the shoulders of the directors of the N. Y. N. H. & H. R. R., all of whom were alike culpable and responsible to the stockholders. **Rhode Island Trolleys.**—To acquire control of the trolley lines of Providence operated by the Rhode Island Co., and representing a cash investment of only $9,685,500, the N. Y. N. H. & H. R. R. expended $24,352,336.41, and also guaranteed the debentures of the Providence Securities Co., amounting to $19,899,000. The resulting loss to the N. Y. N. H. & H. R. R. was $648.680 per annum. This deal was put through by the president of the company, the board of directors assenting. **The Steamship.**—The steamship lines plying between the larger cities served by the N. Y. N. H. & H. R. R. were acquired to stifle water competition; total cost $24,772,416.78, though the properties were acquired by means of dummy companies, officers and directors. **Steamers "Yale" and Harvard."**—Desiring to eliminate these steamers from competition in New England passenger traffic and secure control of certain freight steamers and wharf property in Boston, all owned by the Metropolitan S. S. Co., the general counsel of the N. Y. N. H. & H. R. R. effected their transfer to the latter through a series of dummy companies, whose officers knew nothing of the purpose for which they were being used. **Boston & Maine R. R.**—This line, capitalized at $31,000,000, and with a debt of $34,000,000, had paid substantial dividends for more

than 50 years. The N. Y. N. H. & H. R. R., through its subsidiary, the New England Nav. Co., purchased 55,000 of its shares from the American Express Co. With this stock other stock of the B. & M. R. R. was gathered in by the N. E. Nav Co. until the N. Y. N. H. & H. R. R. had a controlling interest. This move having been declared illegal in Atty. Gen. v. N. Y. N. H. & H. R. R. Co., 198 Mass. 431, the company began a series of shifts and evasions by which the stock was passed through a number of friendly companies, all the while being financed, owned and controlled by the N. Y. N. H. & H. R. R., which finally placed its own officers in charge and selected the directors of the B. & M. R. R. Immediately the stock of the latter began to depreciate. The N. Y. N. H. & H. R. R. had secured control of the B. & M. R. R. without any expenditure of money, merely exchanging its stock for that of the latter. **The Billard Transactions.**—The N. Y. N. H. & H. R. R. being required by the decision of the Massachusetts Court to divest itself of the B. & M. R. R. stock held through the New England Nav. Co., arranged for its purchase by Mr. Billard, one of its stockholders. This man was worth perhaps $30,000, and the transfer involved the raising of $13,743,500. Two companies were organized by the general counsel of the N. Y. N. H. & H. R. R., the Billard Co. and the Boston R. R. Holding Co., and the stock of the B. & M. R. R. transferred to the latter through the Billard Co., the N. Y. N. H. & H. R. R. furnishing all the money to finance the transaction. The effect was to get the stock once more openly under the control of the N. Y. N. H. & H. R. R. The Billard Co. was a mere dummy, all but 20 shares of its stock being owned by the N. Y. N. H. & H. R. R. Mr. Billard then burned his books and papers. Though he had not invested a dollar, he and his friends realized $2,748,700 on the transaction. **The New England Investment & Security Co.**—This company was organized by the N. Y. N. H. & H. R. R. in 1906 by a declaration of trust, to take over and hold for that company its Massachusetts trolley interests, all its assets being provided by the N. Y. N. H. & H. R. R. The Security Co. was a mere device to enable the N. Y. N. H. & H. R. R. to hold the stock of these trolley companies in violation of state law. HELD, that suit should be maintained by the N. Y. N. H. & H. R. R. to reduce to its own possession the assets controlled by the Security company. **Questionable Methods of Increasing Capital Stock.**—Increases have been effected by transferring assets from one subordinate company to another. For instance, its steamship properties, worth $11,500,000 and held by the N. E. Nav. Co., were transferred to the Consolidated Ry. Co. at $20,000,000. This company was then merged with the N. Y. N. H. & H. R. R., its stock being increased $30,000,000. **Manipulation of Accounts.**—In 1911 the N. Y. N. H. & H. R. R. purchased 23,520½ shares of the Rutland R. R. Co. stock from the N. Y. C. & H. R. R. R. for $2,364,977.15. No entry therefor appears on the books of the company. But the stock was, with a check for $135,022.85, delivered to the N. E. Nav. Co. in exchange for its note for $2,500,000; the sum paid the N. Y. C. R. R. thus showing as a cash advance to the N. E. Nav. Co. Similar irregularities in accounting occur in important transactions had with J. P. Morgan & Co. and J. L. Billard. **Payments of Dividends by Subsidiary Companies.**—It was the practice to shift the funds of subsidiary companies to show dividends; for instance, in 1912 the N. Y. N. H. & H. R. R. reported a dividend of $2,252,500 on stock of the N. E. Nav. Co., owned by it. The latter company had at the time but $192,471.61 on hand, the balance of the "dividend" being raised by giving the N. Y. N. H. & H. R. R. its note, receiving therefor $2,000,000 in cash. **Dummy Companies.**—These were a favorite device of the New Haven. A young lady stenographer was made president of one of its steamship companies; a youth of 21 was selected as treasurer of another company. Clerks and irresponsible persons were drawn upon to supply the demand for dummies in the financial joy riding by the management of the N. Y. N. H. & H. R. R. **Large Purchases Without Bids.**—The company purchased cars of one Brady, who was exceedingly generous to its officials, to the extent of $37,000,000, without attempting to secure competition; and purchased locomotives from a company in which a N. Y. N. H. & H. R. R. director was also director. **Political Contributors.**—The N. Y. N. H. & H. R. R. was Democratic in Democratic states and Republican in Republican states, always endeavoring to "get under the best umbrella." Its contributions to campaign purposes, $50,000 in 1900 and $50,000 in 1904, were made

through J. P. Morgan & Co. and Mr. Mellen, its president, and did not appear on the books of the company. **Waste—Information of Value—Losses.**—Losses to N. Y. N. H. & H. R. R. stockholders occurred principally through the acquisition of the B. & M. R. R., the N. Y. W. & B. R. R. and the Rhode Island trolleys stock. $23,223,725.68 was lost through the B. & M. R. R. deal, the total loss on the N. Y. W. & B. R. R. will approximate $17,000,000, while trolley company losses bring the losses up to a total on the three of $65,871,299.61. In 1913 there were deficits of its subsidiary companies aggregating $726,067.70. It is probable that the total loss from waste and mismanagement will approach $90,000,000. **Evil of Interlocking Directorates.**—On the board of the N. Y. N. H. & H. R. R. there were representatives of the Penn. R. R., the N. Y. C. Lines and certain insurance interests, each of which owned 35,000 shares of N. Y. N. H. & H. R. R. stock; and directors who were also directors of the Standard Oil Co., the United States Steel Corporation, and the Pullman Co. **Funds to Be Recovered on Behalf of the Stockholders.**—HELD, that suit should be instituted to recover of Perry and Thorne $303,750, overpaid them in commissions, $1,524,072.77 illegally spent in obtaining N. Y. W. & B. R. R. franchise changes, and the $2,748,700 lost in the Billard transaction. **Directors Consciously Transgressing Anti-monopoly Laws.**—In pursuance of its policy of transportation monopoly the N. Y. N. H. & H. R. R. purchased the Connecticut, Massachusetts and Rhode Island trolleys, steamship lines, and the B. & M. R. R. in violation of the federal statute, of which the directors were cognizant. **New Haven Monopoly Corrupt.**—To achieve the monopoly sought by the N. Y. N. H. & H. R. R. meant reckless and scandalous expenditures, attempts to control public opinion, corruption of government, the attempt to pervert the political and economic instincts of the people, distortion of public opinion, bribery of officials, subsidizing of newspapers and the purchase of college professors. **Directors Criminally Negligent.**—The evidence showed that the directors actively or passively acquiesced in the efforts of the Mellen-Morgan-Rockefeller regime to the extent of the domination of the N. Y. N. H. & H. R. R. over the entire transportation field of New England. Directors should be held individually liable to civil and criminal laws for the manner in which they discharge their trust. **Subsidiary Corporations Condemned.**—The N. Y. N. H. & H. had 336 subsidiary corporations, many of which served no purpose but an evil one. HELD, the Commission should have the power to examine not only the books, records, papers and correspondence of interstate carriers, but of subsidiary companies as well. **Remedy in Public Conscience and Laws.**—Only through exposure of wrongdoing and an awakened public conscience coupled with effective laws, will railroading be placed on the high level it should occupy. It is essential to the welfare of the nation that the reckless and profligate financiering which has blighted the N. Y. N. H. & H. be ended, that there may be assurance that the story will not be repeated with the stockholders of other systems. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32.

(l) Commission has no jurisdiction over issuance of securities by railroads. Proposed bond issue by N. Y. C. & H. R. R. R. Co., 30 I. C. C. 147, 152.

(mn) Commission should have power to examine books, records and other documents of subsidiary corporations. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C., 32, 70.

(o) A suit should be maintainable for the fraud practiced upon stockholders in connection with the Billard Transactions. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32,55.

(p) Corporate economy is not practicable where gifts and obligations arising from friendship tend to obscure official duty. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 61.

(q) No community of interest between large holders of stock and small investors. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 48.

(r) New Haven R. R. secured the B. & M. R. R. in violation of Massachusetts laws and Federal antitrust law. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 48.

(s) Practice of one man serving on many boards condemned. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 66.

(t) All illegal disbursements are ultra

vires. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 67.

(u) Use of railroad credit for private ends of favored individuals should receive severest condemnation of law. Coal and Oil Investigation, 31 I. C. C. 193, 241.

(w) Railroads should be prohibited from furnishing loans to private enterprises. Coal and Oil Investigation, 31 I. C. C. 193, 224.

(w) Railroads should be prohibited from furnishing capital to private enterprises. Coal and Oil Investigation, 31 I. C. C. 193, 224.

(x) Railroads should be prohibited from extending use of credit for benefit of private individuals or companies. Coal and Oil Investigation, 31 I. C. C. 193, 224.

(y) Practically entire railroad mileage of country has been constructed with private capital. Five Per Cent Case, 31 I. C. C. 351, 357.

(z) A Senate resolution directing the Commission to investigate the financial and other operations of the N. C. & St. L. Ry. and the L. & N. R. R. is not a law and does not vest any authority in the Commission. U. S. v. L. & N. R. Co., 35 Sup. Ct., 363, 366.

(aa) A resolution authorizing the president and directors of a railroad company to lease for such length of time and on such terms as they may deem best, railroad property, franchises, etc., of other railroad companies in which the company owns or may own a majority of the capital stock, is manifestly unfair to the minority stockholders of subsidiary companies. Financial Relations Etc., L. & N. R. R. Co., 33 I. C. C., 168, 199.

(bb) Only by the fullest publicity and public supervision of stock and bond issues may unauthorized increases in capital accounts of carriers be prevented. Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C., 168, 172.

(cc) In compliance with senate resolution 153 of Nov. 6, 1913, the Commission instituted an investigation into the affairs of the L. & N. R. R. and the N. C. & St. L. Ry., and reported as follows: The L. & N. R. R. owned 71.77 per cent of the capital stock of the N. C. & St. L. Ry. and $65,000 of its bonds. INTEREST OF THE L. & N. R. R. and N. C. & ST. L. RY. in other lines. The L. & N. R. R., which had constructed but 585.37 miles of road owned or controlled 7,889.77 miles. At least $16,000,000 shown in cost of its road accounts covered items which should not have been charged. In 1880 a dividend of 100 per cent was made possible by arbitrarily increasing the book value of certain assets. The N. C. & St. L. Ry. owned 840.20 miles of railroad and leased 391.02 miles. It had issued capital stock in the sum of $15,984, 787.50 on which only $9,831,840.77 cash had been received. In purchasing the capital stock of the R. R. R. for $186,015 it had charged to property investment account $250,143.75, the par value of the stock. COMPETITION AND DIVISION OF TERRITORY: The geographical relations of these two systems was such that were they separately controlled competition between them would inevitably result. The L. & N. R. R. had secured control of the N. C. & St. L. Ry. to eliminate existing and prospective competition of the latter from St. Louis and Ohio River crossings to Chattanooga, Tenn., and ultimately to parts in the southeast. Having secured control it had used it to effect a contract with the N. C. & St. L. restricting in its own interest the soliciting and routing of freight from certain territory to Nashville and points south. Under rules agreed upon the N. C. & St. L. Ry. contrary to its interest, refused to form through routes with independent lines, while the L. & N. R. R. on shipments to Carolina and Georgia at Nashville turned over all its traffic from the river crossings and beyond to the N. C. & St. L. Ry., and the latter turned over to the L. & N. R. R. all shipments for Alabama and western Florida. All possible competition between the two lines was eliminated. Shippers as well as carriers' employees were required to observe this division of territory. The two lines served the same territory, and formed parts of parallel and competing systems. N. & D. R. R. and Lewisburg & N. R. R.: The former having become indebted to the L. & N. R. R., leased to it its property and franchises for 999 years, in consideration of a sum equivalent to 7½ per cent upon its stock. The L. & N. had acquired 55.7 per cent of such stock. The entire stock of the Lewisburg & N. R. R., $100,000, was owned by the L. & N. R. R., which had advanced $5,637,541.04 for construction, equipment and betterments. The N. &

D. R. R. and Lewisburg & N. R. R. paralleled each other and were naturally competitive. THE T. M. R. R., P. T. & A. R. R. and other PURCHASED OR LEASED LINES: The L. & N. R. R. had acquired a controlling interest in over 100 other railroads. The T. M.—P. T. & A. route was naturally competitive with the L. & N. R. R. between Paducah and Memphis. The T. M. R. R. before its purchase was projected to Nashville. Purchase of the C. O. & S. W. R. R., Louisville, Ky., to Memphis, was also attempted but declared illegal in L. & N. R. R. v. Kentucky, 161 U. S. 677. On purchase of the F. & C. Ry., from Frankfort, Ky., to Paris, Ky., being declared illegal, the L. & N. R. R. made a sham reconveyance. In connection with the C. N. O. & T. P. R. R. it competed for traffic between Frankfort and Cincinnati. The L. & N. R. R. had leased the Ga. R. R., A. & W. P. R. R., and Western Ry. for 92 years; in the case of the Ga. R. R., reducing the number of-competitive routes between Ohio and Mississippi river crossings and the south Atlantic seaboard, and in case of the A. & W. P. R. R. and Western Ry. closing the route from Selma to the Mississippi Valley. By purchasing the K. C. Ry., the L. & N. R. R. was enabled to establish a direct route from Cincinnati to Atlanta and by purchasing the E. & P. R. R., Louisville to Cecilia, Ky., it eliminated L. P. & S. W. R. R. competition between Louisville and Nashville. Purchase of the C. & O. R. R., Springfield to Bardstown, Ky., projected to Louisville eliminated another possible competitor for traffic out of Louisville. Control of the N. O. M. & C. R. R., from Middleton, Tenn., to Mobile, was secured to favor the L. & N. port of Pensacola. The O. & N. Ry. and St. L. & S. E. Ry. were absorbed to prevent competition on through traffic between Nashville and the Ohio River; and the T. & P. R. R., projected from Knoxville to Memphis, to discourage a real competitor from entering the field. The following short lines were absorbed to prevent extension under their charters, viz; the A. & T., I. A. & T., M. T. & A., N. O. M. &T., P. & B., and S. A. railroads. TRACKAGE PRIVILEGES OVER THE WESTERN & ATLANTIC RAILWAY. The use of its tracks between Atlanta and Chattanooga, distance 136 miles, by the L. & N. R. R., and the N. C. & St. L. Ry. did not restrict competition, there being three other available routes of 154, 243, and 157 miles; but the L. & N. R. R. used the tracks in direct competition with the N. C. & St. L. Ry. the lessee, from which it had secured trackage rights, and took advantage of the latter by constructing warehouses at Atlanta, to which the N. C. & St. L. Ry. was denied access. RESTRAINT OF COMPETITION BY CONTROL OF TERMINALS. The L. & N. R. R. and the N. C. & St. L. Ry. owned terminals at Nashville, Tenn., the L. & N. R. R. at Knoxville and Clarksville, Tenn., and the N. C. & St. L. R. R. at Chattanooga. At the latter point, reciprocal switching was in effect on both competitive and non-competitive carload freight; at Nashville, this privilege permitted between the L. & N. R. R. and the N. C. & St. L. Ry. was not accorded on T. C. R. R. competitive traffic. (City of Nashville v. L. & N. R. R. 33 I. C. C., 76), at Knoxville the L. & N. R. R. and the S. Ry. did switch reciprocally on competitive; and a like situation existed between the L. & N. R. R. and the T. C. R. R. at Clarksville. RESTRAINT OF COMPETITION BY STEAMBOAT LINES. By according preferential treatment to the Ryman line on the Cumberland River, Nashville, Tenn., to Burnside, Ky., denied to the Nashville Packet Co., the L. & N. R. R. had deprived the latter of all through traffic on lumber to Louisville. It had also attempted to drive the St. Louis & Tennessee River Packet Co. from the Tennessee River by financing a river line. The L. & N. R. R. had accorded through rates to the Tenn. Riv. Nav. Co., operating on the Tennessee River between Chattanooga and Decatur, while denying them to the Decatur Nav. Co. (Decatur Nav. Co. v. L. & N. R. R., 31 I. C. C. 281); and influenced the C. & E. I. R. R. to withdraw proportional rates between Chicago and the Ohio River, extended to the Chattanooga Packet Co. operating between Chattanooga and Paducah. In the same way, the L. & N. R. R. had crushed competition on the Alabama River between Montgomery and Mobile by according special privileges to certain steamboat lines, and to prevent the establishment of competitive rates on the Green and Barren rivers it had aided the Evansville & Bowling Green Packet Co. in preventing the establishment of competing water lines. RESTRICTION OF COMPETITION BY CONTROL OF PORT FACILITIES: The L. & N. R.

R. served the ports of New Orleans, Mobile and Pensacola. But at New Orleans, most of the water frontage was controlled by the state of Louisiana which through the P. B. R. R. provided equal facilities for all; at Mobile it was shared by the L. & N. R. R., S. Ry. M. & O. R. R., N. O. M. &. C. R. R., and a private dock; while at Pensacola, the L. & N. R. R. owned the only docks and wharves suitable for berthing steamships. Hence it applied its regulations so as to retard export shipments routed via New Orleans and Mobile, in the latter case in particular, (1) by delaying the issuance of through bills of lading on shipments of cotton, (2) by declining to issue through bills of lading on cotton originating at stations south of Montgomery, and (3) by demanding collection of inland freight charges on shipments of cotton at the time orders were issued for it to be switched to the docks for loading. The storage space of the L. & N. R. R. at Pensacola was but 80,000 sq. ft., as compared with a total capacity of 783,426 sq. ft. at Mobile and 2,642,689 sq. ft. at New Orleans. The L. & N. R. R. owned the entire capital stock of the Gulf Transit Co., and expeditions handling at Pensacola was contingent upon shipping via that line. EXCLUDING COMPETITION THROUGH RECIPROCAL AGREEMENTS. The L. & N. R. R. and its subsidiaries entered into the following contracts: With the L. C. & L. Ry., that it should not be a party to any through rates on traffic between Louisville, Ky., on the one hand, and Danville, Ky., and points south thereof. on the other; with the C. N. O. & T. P. Ry., the A. G. S., the N. O., N. E. and the V. & M. railroads, that each side was to withdraw through rates between Cincinnati, Lexington, Louisville, and Mobile and New Orleans on shipments via the lines of the other side; with the E. T. V. & G. R. R., whereby the latter for favors received, was not to construct any extension to Mobile or New Orleans; with the C. N. O. &. T. P., that neither it nor the L. & N. R. R. should construct any line between Louisville and any point on the line of the C. N. O. & T. P. between Cincinnati and Chattanooga; with the Western Ry. of Ala., that for favor accorded it would not compete for busines between Montgomery and B. S. & N. O. stations; with the Western Ry. of Ala. and the A. & W. P. that their passenger business destined to the southwest should be ticketed over the L. & N. R. R. from Montgomery. The result of these various agreements was to exclude railroad competition from most of Tennessee and much of Kentucky and Alabama. RELATIONS OF THE L. & N. and A. C. L. RAILROADS. The Atlantic Coast Line Co., a holding company, owned no stock in the L. & N. R. R.; but the A. C. L. R. R. Co., owned $36,720,000 or 51 per cent of the $71,917,920, of its outstanding capital stock. Prior thereto the holding company had indirectly controlled the L. & N. R. R. through ownership of 53 per cent of the stock of the A. C. L. R. R.; but its interest in the latter was reduced to 27 per cent after beginning of the Commission's investigation. However, it appeared that Walters, Jenkins, and Newcomer, officers of the holding company, owned individually 17 per cent of the stock of the A. C. L. R. R. and controlled, by proxy, from 21 to 32 per cent more. The L. & N. R. R. and the A. C. L. R. R. were, to a certain extent competitive on traffic between the Ohio River and the southeast; but common control restricted competition on traffic to Charleston, S. C., and Wilmington, N. C. CONTRIBUTION FOR POLITICAL AND LEGISLATIVE PURPOSES: Between 1906 and 1914 the L. & N. R. R. expended $82,596.89 to maintain political campaigns, and subsidize newspapers; the $23,274.41 to maintain political and legislative agents, and $59,322.48 to subsidize the press. It assisted in organizing the Tenn. R. R. Assn. and contributed $120,198.44 toward its support. It also issued vouchers for $362,722.30 for "special" services and expenses, the exact nature of which was not disclosed. The N. C. & St. L. R. R. expended $12,993.73, of which $13,-137.23 was for maintaining political and legislative agents and $856.50 for creating public sentiment; besides $599,668.92 for purposes not disclosed. The N. C. & St. L. Ry. contributed $336,849.42 to the Tenn. R. R. Assn. Both lines expended $47,767.98 in a suit to prevent the city of Nashville from aiding the construction of the T. C. R. R. FREE PASSES were reported on in a preliminary report, reported in 31 I. C. C., 261. INCIDENTS OF THE INVESTIGATION. The L. & N. R. R. and the N. C. & St. L. Ry. refused the Commission's investigators access to their correspondence files, the former also refusing to submit for examination any accounts made prior to 1906. The Commission thereupon brought mandamus, which was dismissed

by the federal district court and appeal taken to the supreme court. Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C., 168.

FLOATAGE.

(a) The handling of freight by car float and by lighter differs materially. Chicago Lighterage Charges, 28 I. C. C. 390, 394.

(b) The terminal floating service at New York having been adopted by the railway companies many years ago as the natural and necessary recognition of the physical conditions, is now to be considered as much a part of the transportation service of the carriers as the service rendered on their rails. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 52.

FOLLOW-LOT SHIPMENTS

See Classification, §21.

FOREIGN COMMERCE.

I. CONTROL AND REGULATION.
§½. In general.
§1. Jurisdiction of Commission.
§2. Determination of status.

CROSS REFERENCES

See Bills of Lading, §6 (b); Common Carrier, §6½ (b); Demurrage, §15 (g); Export Rates and Facilities; Loss and Damage, §6 (i); Overcharges, (s); Through Routes and Joint Rates, §22 (k).

I. CONTROL AND REGULATION.

See Control and Regulation.

§½. In General.

(a) The Carmack amendment does not apply to foreign commerce; and a railroad whose bills of lading expressly provide that they are issued on behalf of its own lines only, and as agent for its connections, but without joint liability, cannot be held for the failure of a connecting steamship line to accept a shipment for transportation. Hamlen & Sons v. I. C. R. R. Co., 212 Fed. 324, 327.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) The Commission has jurisdiction over traffic from a point in the United States to a point in Canada, and may act upon American carriers to a certain extent as to the rates involved; but it is doubtful if it can require American lines to establish and maintain for the future a rate to Canadian points. Rates on Soda Ash and Other Commodities, 28 I. C. C. 613, 614.

(b) Foreign and domestic traffic when carried from same port to same destination is not "like kinds." Louisiana Sugar Planters' Assn. v. I. C. R. R. Co., 31 I. C. C. 311, 318.

(c) Section 1 of the Act includes shipments to and from a foreign country. It would be difficult to use language more unmistakably significant that Congress had in view the whole field of commerce (except commerce wholly within a state) as well as that between the states and territories as that going to or from foreign countries. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C., 690, 697.

§2. Determination of Status.

See Interstate Commerce, I.

(a) Complainant assailed the domestic rate of 15c per 100 lbs. charged on shipments of clean rice in carloads from Lake Charles, La., to Port Arthur, Tex., as unreasonable. At the same time defendants published a 10-cent rate on clean rice, when for export or coastwise destination, and the shipments in question were in fact later shipped to Porto Rico. But there were no notations on the bills of lading to Port Arthur to indicate that they were other than domestic shipments. Upon arrival at Port Arthur the freight charges were paid without objection at the domestic rate, and the rice unloaded into complainants' mill. There they were double sacked and stored for a time before being exported. At the time of shipment complainant was not aware of the existence of the export rate. HELD, that the export rate having been in effect more than six months, complainant was charged with notice thereof. The mere intention on the part of a shipper to export his traffic, unaccompanied by any outward indication that the traffic is in fact for export, is not sufficient to stamp it as foreign commerce. Reparation denied and complaint dismissed. Port Arthur Milling Co v. T. & S. F. Ry. Co., 28 I. C. C. 697.

(b) The character of the commerce,

not its mere accidents, must determine whether a shipment is local or foreign. But the mere intention of the shipper to export his traffic, unaccompanied by any circumstance or outward indication that the traffic is in fact for export, is not sufficient to stamp it as foreign commerce. Port Arthur Milling Co. v. T. S. F. Ry. Co., 28 I. C. C. 697, 700.

(c) Shipments of lumber on local bills of lading between points in same state destined from beginning for export are foreign and not intrastate commerce. Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C., 162, 171.

(d) It is nature of the traffic and not its accidents which determines whether it is intrastate or foreign. Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C., 162, 171.

(e) The character of foreign traffic is not determined by the billing but by the fact that at the point of origin it is destined for a foreign port and is taken up by intervening common carriers. Shipments on local bills of lading destined from the beginning for export are foreign commerce. This common arrangement does not depend upon the establishment of a through route, or the issue and recognition of a through bill of lading, but may be otherwise manifested. That there is an arrangement by which it is to be carried as foreign freight is evidenced by the conduct of each of the carriers. That foreign freight originating in the United States is sent to a port, taken by steamship to the Panama Canal, there unloaded and taken up by a foreign ship and carried to destination, constitutes foreign commerce; and the agents that carry it are agents of foreign commerce to the extent of the services they render. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C., 690, 697.

(f) Shipments on local bills of lading destined from the beginning for export are foreign commerce. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C., 690, 697.

(g) When a commodity has been delivered to a common carrier, to be transported on a continuous voyage or trip to a point beyond the limits of the state where delivered, the character of interstate or foreign commerce attaches thereto, and it is immaterial whether the shipment be made on a through bill of lading, or upon a bill or bills issued for transportation between intrastate points. Bailey v. M. P. Ry. Co. (Mo.), 171 S. W. 44, 46.

FORWARDERS.

See Classification, §7 (k).

(a) Carload rates should not be denied on mixed merchandise shipped by a forwarding agent because the shipper is not the owner of the property. Sheldon & Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A276,

FREE TIME

See Demurrage, §15; Storage, §3 (a); Track Storage, III (d).

FREE TRANSPORTATION

See Advanced Rates, §2½ (l); Crimes, III; Discrimination, §5 (f); Passenger Fares and Facilities, §12; Reduced Rates, §3 (b), (e); Special Contracts, §2 (h); Special Rates and Services, (j); Water Carriers, §6½.

FREIGHT BILLS

See Storage, §1 (a), §2 (l).

(a) The Commission instituted an inquiry to determine whether freight bills or receipts, when presented to the consignee, should show on their face information respecting: (1) The point of origin; (2) date of shipment; (3) weight; (4) route, including name or initials of each carrier participating in the haul, and junction points; (5) initials and number of car; (6) adequate description of property shipped; (7) rate or rates applied; (8) nature, amount and point of accrual of charges for stop-in-transit, reconsignment, switching, car service, storage, etc.; and (9) name of consignor and date of arrival at destination. Whereupon the carriers themselves, through the American Railways Ass'n, and the Ass'n of American Ry. Accounting Officers, voluntarily took up the matter with the shippers, represented by the National Industrial Traffic League and others. As a result of their joint deliberations and of informal conferences between the Commission and bodies named, a standard form of freight bill was agreed upon and presented to the Commission. HELD, that section 20 of the act authorizes the Commission to pre-

scribe the form and substance of freight bills and require their use; but, in view of the apparent general consensus of opinion among carriers and shippers, the Commission merely expresses its approval of the proposed form, which provides for the information referred to, and declares it a proper form and one that carriers should at once adopt. In the Matter of Freight Bills, 29 I. C. C. 496.

(b) Freight bills have three functions: (a) to serve as a receipt to consignee or consignor and as prima facie evidence of payment of transportation charges; (b) to serve as a receipt to the carrier and as prima facie evidence of delivery of the property; and (c) to serve as a notice to consignee of arrival of shipment. But in addition to these defined uses a freight bill has other uses. It is often a means of identifying the shipment, and to this extent the name of the shipper is frequently essential in effecting prompt delivery; it is also used extensively as a record. In the Matter of Freight Rates, 29 I. C. C. 496.

(c) It is obviously the duty of carriers in rendering a bill for transportation service to state thereon such information as will enable the consignor or consignee with the aid of the published tariff to verify the correctness of the charges which he is called upon to pay. In the Matter of Freight Bills, 29 I. C. C. 496, 497.

(d) Freight bills should contain the name of shipper. Michigan Steel Boat Co. v. M. C. R. R. Co., 32 I. C. C., 576, 577.

GONDOLA CARS

See Cars and Car Supply, §9¼.

GOVERNMENT MATERIAL

See Reduced Rates, §4.

GRADING RATES

See Blanket Rates, §9; Distance Rates.

GRAIN DOORS

See Allowances, §2 (d), §8 (2)

HEATER CARS

See Cars and Car Supply, §7 (l), §8 (a), §9½; Evidence, §18 (m); Loss and Damage, §6 (j), (k); Personal Injuries, (g).

ICING

See Additional Charges, (m); Precooling; Refrigeration, §3½

HOURS OF SERVICE LAW

(a) The Federal Hours of Service Law does not apply to an employee upon a railroad work train operated wholly within one state by a railroad corporation engaged in interstate commerce upon a line of railroad constituting a part of the company's through highway of interstate commerce. U. S. v. C. M. & S. P. Ry. Co., 218 Fed. 701, 702.

IMMUNITY OF WITNESSES

See Procedure Before Commission, §21.

(a) The Immunity Act was intended only to make available testimony compulsorily given, and only to reward the unwilling giver of such evidence; that testimony given without the assertion of the constitutional privilege, or declined to be given upon any other ground than that of its incriminating tendency, is not compulsory testimony under the fifth amendment, and has always been available without new remedial legislation; and so, there being no necessity for conferring immunity on the giver of it, Congress will not be construed to have done so, where its language may be reasonably otherwise construed. U. S. v. Skinner, 218 Fed. 870, 880.

(b) It is not the duty of the government to inquire of a witness about to give testimony which may incriminate him, whether he claims his constitutional privilege to refuse to testify. United States v. Skinner, 218 Fed. 870, 879.

(c) In view of the purpose of Congress in enacting the Immunity Act, viz., to make available compulsory incriminating testimony, and to remove the obstacle to the use of such testimony, and in view of the fact that the only obstacle to the disclosure of such testimony that needed removal was that presented by the fifth amendment, and that it applied only in favor of witnesses who assert their constitutional privilege, and so are in the attitude of being compelled to testify, and does not apply to those who testify without asserting their privilege, and who are

in the attitude of voluntary witnesses, the immunity would be limited to the class of witnesses in wnose favor alone the obstacle existed; i. e., those who assert their privilege to decline to answer upon the constitutional ground of a tendency to incriminate. United States v. Skinner, 218 Fed. 870, 878.

(d) Witnesses who voluntarily appear before the Interstate Commerce Commission and give testimony concerning the financial operations of a carrier investigated by the Commission under a senate resolution and who do not claim the constitutional privilege of refusing to testify on the ground of self-incrimination cannot set up the fact of such testimony as a bar to a subsequent criminal prosecution. U. S. v. Skinner, 218 Fed. 870, 877.

IMPORT TRAFFIC.

I. DETERMINATION OF STATUS.
II. REASONABLENESS OF RATES AND DISCRIMINATION.

See Advanced Rates, §7 (5), (a); Evidence, §13 (1), (l).

(a) The Commission has intimated disapproval of special import rates below the domestic rate basis contemporaneously in effect, but this necessarily carries with it a suggestion of approval of the domestic rate principle as the one which should apply to all. It carries no suggestion that when a domestic rate ceases to be a paper rate merely, and becomes in fact a carrying rate, it should not be scaled in the same manner as other domestic rates to the same destination points. Rates on Potash and Other Commodities, 29 I. C. C. 625, 628.

(b) Complainant attacked the commodity rate of 38c per 100 lbs. for the transportation of imported burlap from New York, N. Y., Boston, Mass., Philadelphia, Pa., Norfolk and Newport News, Va., to Memphis, Tenn., as unreasonable and discriminatory compared with import rates to St. Louis. The rates from New York and Boston to St. Louis were 22c and 20c, respectively, while the rates from Philadelphia and Baltimore were certain differentials under the New York rate. Practically all burlap comes from Calcutta, India, through the Atlantic ports of New York, and Boston and the Gulf port of New Orleans. The greater portion is imported via the Atlantic ports, which have direct steamship lines from Calcutta, whereas traffic from New Orleans must be transshipped at Liverpool or London, the average time consumed in shipment in the former case being 60 days, in the latter, 90. New York and Boston were also the largest "spot" burlap markets, i. e., markets which have burlap for immediate delivery. The rate on burlap from New Orleans to St. Louis was 16c for a distance of 699 miles, and to Memphis 12c for a distance of 394 miles; but the ocean rates to Boston and New York being about 6c per 100 lbs. less than to New Orleans were equalized, and the rate via Boston 2c less than either. The distance from New York to St. Louis is 1,054 miles, and to Memphis 1,158 miles. The 38c rate from New York to Memphis limited complainant to the New Orleans route, placing him at a disadvantage as to his St. Louis competitors, who could ship from either New Orleans or the Atlantic ports, and thus had the advantages derived from quicker shipments and "spot" markets. Burlap is rated fourth class in the Official Classification, but the domestic rates on this traffic from New York and Boston to St. Louis and Memphis are equal to the fifth-class rates, 35c and 38c, respectively. There were at least two railroad systems with one-line hauls to St. Louis, and the other roads with two or three line hauls had necessarily participated in a rate the same as that over the one-line systems. None of the carriers to St. Louis reached Memphis. If the carriers to Memphis were to withdraw from the 22c rate to St. Louis, the other lines reaching St. Louis would simply obtain more of the traffic with less competition. The maintenance of the 22c rate to St. Louis is not the voluntary act of the carriers which reach Memphis. HELD, that in view of the dissimilarity of circumstances and conditions surrounding the transportation to St. Louis and Memphis, the existing rate adjustment does not result in undue prejudice against Memphis, in violation of section 3 of the Act. Complaint dismissed. Memphis Freight Bureau v. B. & O. Ry. Co., 28 I. C. C. 543.

(c) The Commission considered the rate proposed by the M. & O. Ry. of 15c per 100 lbs. on low grade imported blackstrap molasses, in tank cars, from Mobile, Ala., to East St. Louis, Ill., and St. Louis, Mo., a distance of 657 miles. Protestants, the I. C. Ry. Co. and the L. & N. Ry. Co., contended that the rate was too low and would compel them to reduce their rate

of 21c from New Orleans to St. Louis and East St. Louis, a distance of 700 miles, and their rates generally to Chicago and Ohio River crossings and points beyond, and that the effect of the proposed rate would be to discriminate in favor of one shipper, Snyder & Co., of Chicago. About 250,000 tons of blackstrap a year are required in the animal foods industry, exceeding by 90,000 tons the local supplies available from Louisiana plantations and the sugar belt fields of Colorado, Michigan and Wisconsin. This commodity is available in Cuba, being transported from there to the United States in tank steamers. At the port it is necessary to erect a tank, into which the blackstrap may be pumped from the steamer. Later it is pumped into tank cars for shipment to destination. Snyder, who had undertaken to meet the deficiency in the home supply by importations from Cuba, found that the carriers at the ports had no tank facilities and that it would be necessary for anyone engaging in the importation of blackstrap to build his own tank; and respondent M. & O. Ry. Co., operating between Mobile and St. Louis, offered to reduce its rate from Mobile from 21c to 15c upon his building a tank at its docks, at the same time notifying its New Orleans connections that it would join in a similar rate from that port. Protestants maintained import rates of 15c on shipments from New Orleans to St. Louis of clay, pig lead, magnesite, chrome ore, hemp and jute waste, brewers' rice and sisal, while their 21c rate applied not only to blackstrap, but to all higher grades of molasses, and their domestic rate on refined sugar was but 17c. Their 21c rate applied from practically all Louisiana plantations, from many of which the rate to New Orleans was 7c, and protestants shrank their divisions so as to give the originating line at least 6c for its haul up to New Orleans. One of protestant lines maintained a rate of 15¾c on blackstrap from New Orleans to Owensboro, Ky., a distance of 789 miles. HELD, that the proposed rate did not appear to be unduly preferential or prejudicial, and there were no grounds for continuing the suspension. But that there may be no discrimination between shippers, the item in question should be revised so that the 15c rate would be applicable to imported molasses in tank cars, whether imported from Cuba or other countries, and whether unloaded into storage tanks or transferred direct from steamer to tank car. Molasses Rates from Mobile, Ala., 28 I. C. C. 666.

(d) The difference between import and domestic rates should not be so great as to materially injure a domestic industry, if a smaller difference would enable the imported article to move freely, and at a reasonable cost to the consumer. Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 31 I. C. C. 311, 319.

(e) The difference made between the import rate and the domestic rate must be a reasonable difference, or such as is reasonably necessary. Louisiana Sugar Planters' Asso. v. T. C. R. R. Co., 31 I. C. C. 311, 318.

(f) The Commission in determining whether or not the difference made by a carrier between an import rate and a domestic rate is just, should consider all the circumstances and conditions, including the interests of carriers, producers, dealers and consumers. It is not the duty of the Commission to determine merely whether or not some difference may be made, but whether or not the particular difference made is reasonable, and if unreasonable the extent to which it is unreasonable. Louisiana Sugar Planters' Asso. v. T. C. R. R. Co., 31 I. C. C. 311, 318.

(g) Carriers may maintain lower rates on import traffic than on domestic traffic, but it does not follow that the difference in the two rates may be whatever they may choose to establish. Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 31 I. C. C. 311, 318.

(h) Greater difference than 3c per 100 lbs. higher than import rate is discriminatory. Louisiana Sugar Planters' Assn. v. I. C. R. R. Co., 31 I. C. C. 311, 320.

(i) Import rate on blackstrap may be lower than domestic rate, but difference must be reasonable. Louisiana Sugar Planters' Assn. v. I. C. R. R. Co., 31 I. C. C. 311, 318, 320.

(j) Respondents state that domestic rates should not be lower than the import rate. Advance in rates on fertilizer and materials from New Orleans, La., to Texarkana, Ark.-Tex., found not justified. Rates on Fertilizer Material from New Orleans, La., Unrep. Op. A-758.

(k) Where imported commodities are stored with a rail carrier direct from the incoming ship, the former can and must under the law see that the import rate is properly applied. National Dock & Storage Warehouse Co. v. B. & A. R. R., 33 I. C. C., 330, 331.

(l) Complainant attacked defendant's tariff rule providing that import rates at Boston, Mass., should not apply unless traffic was stored in customs bonded warehouses or delivered to rail carrier direct from ship's side or dock of the vessel, as discriminatory. Complainant operated a public warehouse for storage of all traffic, foreign and domestic, while defendant, B. & A. R. R., operated its warehouse chiefly as an adjunct to its transportation service. Wool and hides shipped from the B. & A. R. R. Warehouse to Montreal, Que., were accorded the lower import rates, while on those shipped from complainant's warehouse domestic rates were applied. The storage charges of the B. & A. R. R. were filed with the Commission, but complainants filed no tariffs and might make different charges to different persons for like services. HELD, that the tariff provisions attacked were not shown to be unjustly discriminatory or unduly prejudicial, being essential to protect the carrier against the danger of an improper application of the rate. National Dock & Storage Warehouse Co. v. B. & A. R. R., 33 I. C. C., 330.

(m) When imported goods have been mingled with and have become a part of the general property of the country, no difference can be made between the rates on such goods and goods of domestic origin for the reason that there can in such event be no certainty of identity. Carriers and shippers are both responsible for misapplication of the import rates to domestic shipments by commingling the import products with the domestic, or otherwise. Louisiana Sugar Planters' Asso. v. I. C. R. R., 34 I. C. C., 253, 254.

(n) Complainants attacked the rates for the transportation of imported wood pulp from Boston, Mass., to various New England points as unreasonable and discriminatory compared with rates on domestic wood pulp from Boston to the same points. The rates on imported pulp from Boston to Lawrence, Mass., Bellows Falls, Vt., Hinsdale, N. H., and North Hoosick, N. Y., were 5, 10, 10, and 11c, yielding 38.4, 17.5, 18.2, and 13.2 mills per ton-mile for distances of 26, 114, 110, and 166 miles; as compared with domestic pulp rates of 4 3-4, 8 1-4, 8, and 9 1-2c, yielding 36.5, 14.5, 14.5, and 11.4 mills per ton mile. Imported pulp loaded from 50,000 to 60,000 lbs. per car; domestic pulp from 40,000 to 50,000 lbs., the former containing about 10 per cent water, the latter from 40 to 50 per cent water. The two kinds of pulp competed actively. HELD, that the rates attacked were not shown to be unreasonable, intrinsically or relatively. Complaint dismissed. Moore & Thompson Paper Co. v. B. & M. R. R., 34 I. C. C. 323.

(o) On reargument of 31 I. C. C., 311, intervener questioned the Commission's finding that the charging of rates on imported blackstrap molasses from the ports of New Orleans and Mobile lower than those on domestic blackstrap was not discriminatory against the latter; contending that the principle held only where import traffic moved under a through bill of lading and would have moved to destination wholly by water, but for the lower rate from an intermediate port, and also that the mere fact that goods were imported sometime in the past does not entitle them to a lower rate than that charged on domestic goods. HELD (1) that the fact that rail transportation from the port was not under a through bill of lading was not material, since the product could not move at all to interior destinations in competition with the domestic products but for rates somewhat lower; (2) the second contention was not pertinent, since in the case of imported blackstrap the identity of the shipment was preserved. Original report and order adhered to. Louisiana Sugar Planters' Asso. v I. C. R. R., 34 I. C. C., 253.

INDEX

See Tariffs, §13.

INDUSTRIAL ROADS

See Allowances, §2 (a); Common Carrier; Demurrage, §3 (c); Divisions, §1 (e); Evidence, §44½ (c); Facilities and Privileges, §1 (a); Interstate Commerce Commission, §3 (e) (f); Switch Tracks and Switching, §2 (a), (b); Tap Lines, §3 (1), (a), §6½ (c), §7 (aa), (b), (c), (d), (e), (f),

(g), (h), (i,; Tariffs, §7 (p); Transportation, §5 (aa)

INITIAL CARRIER

See Loss and Damage, §1 (a), (b), (c), §2 (c), (e), (o), (v), §3 (c), §6, §11½ (a), §15 (b); Routing and Misrouting, §5½ (l), §7½ (b); Warehouseman, (b).

INJUNCTION

See Commerce Court, §4½, Courts, §14; Interstate Commerce Commission, §15 (p).

INSPECTION

See Bills of Lading, §9½; Reconsignment, §3 (f); Transportation, §1 (f); Weights and Weighing, §12.

INTERCHANGE OF TRAFFIC

See Act to Regulate Commerce, II (i); Cars and Car Supply, §30; Interstate Commerce Commission, §8½ (d); Switch Tracks and Switching, §7; Tap Lines, §4 (b); §9 (c); Terminal Facilities, §3 (m), §5 (e), (f); Through Routes and Joint Rates, §3½ (b).

(a) A carrier interchanging traffic with one connecting carrier and thereby short hauling its own line cannot refuse to interchange traffic with another connecting carrier solely on the ground that its own line will be short hauled thereby. City of Nashville v. L. & N. R. R. Co., 33 I. C. C. 76.

INTEREST

See Reparation, §17½.

INTERMEDIATE CARRIER

See Loss and Damage, §1 (b), §5¾ (a), (b), §6 (w); §7 Through Routes and Joint Rates, §10.

INTERSTATE COMMERCE.

I. DETERMINATION OF STATUS.
- §½. In general.
- §1. Beginning and end of transit.
- §2. State shipment through another state.
- §3. Participation in interstate movement.

II. CONTROL AND REGULATION.
- §4. State.
- §5. United States.

CROSS REFERENCES

See Act to Regulate Commerce, II (q); Overcharges, (s); Passenger Fares and Facilities, §1 (a); Terminal Facilities, §7 (a); Through Routes and Joint Rates, §22 (k).

I. DETERMINATION OF STATUS.

§½. In General.

See Foreign Commerce, §2.

(a) The character of commerce, not its mere accidents, must determine whether a shipment is local or foreign. Port Arthur Rice Milling Co. v. T. & Ft. S. Ry. Co., 28 I. C. C. 697, 700.

(b) Transportation of a passenger from a point in one state to a point in an adjoining state is "interstate transportation" and governed by the Interstate Commerce Act. Ligon v. St. L. & S.F. Ry. Co. (Mo. App. 1914), 168 S. W. 647.

(c) To the extent of any intrastate business done as a common carrier a stockyards corporation exercises a function which is unauthorized and from which it will be ousted by the courts upon application of the proper executive officer of the state. State v. Kansas City Stock Yards Co. of Mo. (Kan., 1915), 145 Pac. 831.

§2. State Shipment Through Another State.

(a) Transportation, where traversing another state, or a portion of same, though the points of origin and destination are in the same state, constitutes interstate commerce. Wichita Falls & W. Ry. Co. of Tex. v. Asher (Tex. 1915), 171 S. W. 1114, 1116.

(b) A car load of goods and live stock consigned from a point in Oklahoma to a point in Kansas, but final destination altered en route, is a shipment in interstate commerce. Kirby v. U. P. R. Co., (Kans. 1915), 146 Pac., 1183.

(c) A shipment from Missouri to the Kansas City stock yards which passes en route through another state is interstate and governed by the federal laws

and decisions. Potter v. K. C. S. Ry. Co. (Mo. 1915), 172 S. W. 1153.

§3. Participation In Interstate Movement.

See Through Routes and Joint Rates, §3½.

(a) Where the transportation is divided into two separate, distinct and independent stages, the initial billing imposing no duty on the initial carrier to deliver the freight to the connecting carrier for further transportation, the responsibility of the first carrier ends with the delivery of the car at the point of connection of the two lines. Smith v. G. C. & S. F. Ry. Co. (Mo. App., 1914), 164 S. W. 132.

(b) Plaintiff brought action for the value of goods lost in transit between Phillipsdale, R. I. and New York, N. Y. Defendant operated a trolley express car by which the goods were shipped from Phillipsdale to Providence, 4 miles, where they were delivered to the E. & P. Express Co. for transmission to New York. Defendant fixed no through rate from Phillipsdale to New York and did not render plaintiff a bill for through charges, but did have an agreement with plaintiff for a rate of 6c from Phillipsdale to Providence, irrespective of the character or value of the goods. This was paid on weekly bills rendered on all goods carried and delivered to the E. & P. Express Co., whether the charges of the latter were prepaid or were collected from the consignee. In the former event the defendant advanced the amount thereof, in its bill to plaintiff, placing the same as a separate item under the head of "advances." Defendant did, however, in its bills of lading, undertake to carry the goods from Phillipsdale to New York City. HELD, that defendant did by the latter fact engage in commerce between the states, and hence subjected itself to all the restrictive provisions prescribed by Congress in the Interstate Commerce Act and its amendments, and became an initial carrier within the provisions of section 20 of the act. It was therefore liable for loss or damage to the goods in the hands of the E. & P. Exp. Co., notwithstanding a condition printed on the back of its bills of lading by which it sought to restrict its liability to loss occurring on its own road. Glenlyon Dye Works v. Interstate Exp. Co. (R. I., 1914), 91 Atl. 5.

(c) An intrastate carrier which participates in through interstate transportation is subject to the jurisdiction of the Commission. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 171.

(d) The contract of carriage here involved was made in Illinois for shipment to a point in Kentucky, and therefore it was an interstate contract, under the federal legislation regulating interstate commerce, and this legislation has been held to be controlling notwithstanding that it may conflict with state constitutions and laws. Howard & Callahan v. I. C. R. R. Co. (Ky. 1914), 171 S. W. 442, 444.

(e) Transportation, where traversing another state or a portion of same, though the points of origin and destination are in the same state constitutes interstate commerce. Wichita Falls & W. Ry. Co. of Tex. v. Asher, (Tex. 1915), 171 S. W. 1114, 1116.

(f) A car which is part of an interstate train is moving in interstate commerce, although being switched in a repair yard. Otis v. Great Northern Ry. Co. (Minn. 1915), 150 N. W. 922, 923.

(g) The fact that most of the business done as a common carrier by a stockyards company is interstate, and that intrastate business is done only in virtue of the presence of a few cars of that character in an entire train, which is handled together, does not effect such a merger of the two classes of business as to place it all beyond the control of the state. State v. Kansas City Stock Yards Co. of Mo. (Kan., 1915), 145 Pac. 831.

(h) Stock shipped from Missouri points to Kansas City Stock Yards, which are partly in Missouri and partly in Kansas are interstate shipments, where during the unloading process they cross the state line. Deardorff v. C. B. & Q. Ry Co. (Mo., 1914), 172 S. W. 333.

(i) It is true that if, by reason of the interblending of the interstate and intrastate operations of interstate carriers, adequate regulation of interstate rates cannot be maintained without affecting intrastate rates. Congress is entitled to determine what regulation shall be applied. C. M. & St. P. Ry. Co. v. State Public Utilities Comm'n, (Ill. 1915), 108 N. E., 729, 731.

(j) While there was some dispute in the lower federal courts as to whether a shipment from one point in a state

to another point in the same state where the goods in transit passed through another state was interstate or intrastate commerce, it is now settled by the highest federal court that such a shipment thus moved is interstate commerce (Hanley v. K. C. S. R. Co., 187 U. S. 617, 23 Sup. Ct., 214, 47 L. Ed., 333; 28 L. R. A. (N. S.) 985, note), and as the goods in question on their way to destination passed through a part of the state of New Jersey into another state the commerce in question was not interstate. Lynch v. N. Y. C. & H. R. R. Co., 153 N. Y. S., 633. 637.

II. CONTROL AND REGULATION.

See Control and Regulation.

§4. State.

See Loss and Damage, §3; State Regulation.

(a) The city of New York passed ordinances providing that everyone engaged in the occupation of expressman must pay a license fee on each express wagon used and give a bond for each and every vehicle license, conditioned for the safe and prompt delivery of all articles. The Adams Express Co. tranacts its business in many states, in the city of New York handling daily about 50,000 interstate shipments. It also does a local business in the city and between the city and other points in the state, but interstate business comprises 98 per cent of its total business transacted in the city, and, being impracticable to effect a separation, the local and other intrastate shipments are handled in the same vehicles that are employed in connection with the interstate transportation. HELD, that local police regulations cannot go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege and Congress having, under the Act of June 29, 1906, exercised its authority and provided its own scheme of regulation in order to secure the discharge of the public obligations that the express business involves, the ordinances are null and void. Barrett v. New York 34 Sup. Ct. 203, 208; 232 U. S. 14, 58 L. ed.

(b) The passage of the Act of Congress of June 29, 1906, C. 3591, 34 Stat. at L., 584, deprived the state of authority, under its police power, to pass acts relative to contracts made by carriers pertaining to interstate shipments. St. L. & S. F. Ry. Co. v. Cox, Perry & Murray (Okla., 1914), 138 Pac. 144.

(c) A state law enacted under any of the reserved powers—especially the police powers—is not to be set aside as inconsistent with an act of Congress regulating interstate commerce, unless there is an actual repugnacy, or unless Congress has, at least, manifested a purpose to exercise its paramount authority over the subject. M. K. & T. Ry. Co. v. Harris. 34 Sup. Ct. 790, 793, 234 U. S.——.; 58 L. ed.——.

(d) The effect upon interstate commerce of requiring under state authority that an interstate carrier move purely local freight between private spurs in the same city is so indirect and consequential that it cannot be said to deprive the carrier of rights secured by the commerce clause of the federal constitution. L. & N. R. R. Co. v. Higdon, 34 Sup. Ct., 948; 234 U. S. 592; 58 L. Ed. —.

(e) The Interstate Commerce Act has no application to state commerce (Interstate Commerce Commission v. Brimson, 154 U. S. 447, 457, 155 U. S. 3, 14 Sup. Ct. 1125, 38 L. Ed. 1047); and it follows that state statutes regulating commerce are void only so far as they affect commerce of an interstate nature. Hocking Valley R. R. Co. v. New York Coal Co., 217 Fed. 727, 735.

(f) The Hepburn Act, as modified by the Carmack amendment, requiring a carrier to issue a receipt or bill of lading for property received for transportation from a point in one state to a point in another, covers the entire field of the liability of interstate carriers and supersedes and excludes the exercise of the police power of a state to deal with the subject. Johnson Grain Co. v. C. B. & Q. R. R. Co. (Mo. App., 1914), 164 S. W. 182.

(g) The Commission can not be controlled in its judgment upon the reasonableness of interstate rates and fares by the independent action of a state legislature or a tribunal not federal. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 355.

(h) Where a rate prescribed by the state of Minnesota on intrastate traffic was not filed with the Commission it could not be used as a factor in a through rate. Cement Rates from Mason City, 30 I. C. C. 426, 428.

(i) Providing bulkheads or making an allowance therefore is a practice that is comparatively recent and was entered

into in obedience to state authority. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 437, 438.

(j) To the extent that state-established rates are permitted to determine the reasonableness of interstate rates, to that extent must the Commission, as a federal tribunal, be embarrassed by the anomalous situations arising from conflicts between state and federal jurisdictions. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 709.

(k) The Interstate Commerce Act, with its amendments, controls as to liability of carriers by railroad in interstate shipments, regardless of state laws and policies on the subject. St. L. I. M. & S. Ry. v. Faulkner (Ark., 1914), 164 S. W. 763, 764.

(l) The contract of carriage here involved was made in Illinois for shipment to a point in Kentucky, and therefore it was an interstate contract, under the federal legislation regulating interstate commerce, and this legislation has been held to be controlling notwithstanding that it may conflict with state constitution and laws. Howard & Callaghan v. I. C. R. R. Co. (Ky., 1914), 171 S. W. 442, 444.

(m) Where a shipment is one of interstate commerce, the federal statutes and federal decisions are controlling, although the state courts have jurisdiction to determine actions relative thereto based upon the United States Statutes. A. C. Cheney P. A. Co. v. N. Y. C. & H. R. R. Co., 152, N. Y. Suppl., 285, 290.

(n) A local rate fixed by a state commission is not invalid as to intrastate shipments because an interstate shipment moved between the same points might have to pay a higher rate. C. M. & St. P. Ry. Co. v. State Utilities Comm'n, (Ill. 1915), 108 N. E. 729, 731.

(o) No doubt has ever been entertained of the authority of the state to regulate rates for transportation that is wholly within the state although the authority of the state does not extend to the regulation of charges for interstate transportation or to discrimination against interstate commerce. C. M. & St. P. Ry. Co. v. State Public Utilities Com'n, (Ill. 1915), 108 N. E., 729, 731.

§5. United States.

(a) Defendant, railroad company, acting under a charter from the State of Pennsylvania which authorized it to engage in coal mining as well as in the business of common carrier, transported 20 carloads of hay over its lines from Buffalo, N. Y., to Scranton, Pa., for the use of animals employed in and about its mines at Scranton, Pa. The coal taken from such mines was sold for use by the public, except such portion as was required for use as fuel by the company's locomotives. Defendant was convicted of violating the commodities clause of the Hepburn Act, and sued out a writ of error, contending that the commodities clause violated the 5th Amendent to the Federal Constitution. HELD, that the statute relates to inbound as well as outbound shipments, both classes of transportation being within the purview of the evil to be corrected, and therefore subject to the power of Congress to regulate interstate commerce. While the exercise of that power is limited by the 5th Amendment, the commodities clause does not take property without due process of law, nor arbitrarily deprive the company of a right of property. The statute deals with railroad companies as public carriers, and the fact that they may also be engaged in a private business does not compel Congress to legislate so as not to interfere with them as miners or merchants. Where carriers haul for the public and also for themselves, there is an opportunity for discrimination in favor of themselves as to rates, facilities, and quality of service, and the commodities clause is not an unreasonable and arbitrary prohibition against a carrier transporting its own property, but a constitutional excercise of a governmental power intended to cure or prevent the evils that might result. D. L. & W. Ry. Co. v. United States, 34 Sup. Ct. 65, 66, 231 U. S. 363, 58 L. ed. —.

(b) The effect of the Carmack amendment was to give to the Federal jurisdiction control over interstate commerce, and to make supreme the Federal legislation regulating liability for property transported by common carriers in interstate commerce. A. T. & S. F. Ry. Co. v. Robinson, 34 Sup. Ct. 556, 558, 233 U. S. 173, 58 L. ed.——.

(c) Interstate shipments are governed by the laws of Congress and the decisions of the Supreme Court of the United States. Collins v. D. & R. G. Ry. Co. (Mo. App., 1914), 167 S. E. 1178.

(d) An interstate shipment is subject only to the Interstate Commerce Act and this statute is recognized and enforced by the state courts. Central of Georgia Ry. Co. v. Patterson, (Ala. 1915), 68 So., 513.

(e) The rights and liabilities of parties engaged in interstate commerce are governed by the federal law. Colby v. American Express Co. (N. H. 1915), 94 Atl. 198, 199.

INTERSTATE COMMERCE COMMISSION.

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§1. In General.

(a) It does not lie in the mouth of a carrier to say that a power which it contends has been delegated to carriers is of "such a nature that it cannot be delegated to the Commission." United States v. A. T. & S. F. Ry. Co., 34 Sup. Co. 986, 991; 234 U. S. 476; 58. L. ed. —

(aa) The supreme court has held that the Interstate Commerce Commission in the exercise of its jurisdiction, in promoting and facilitating commerce, as applied to the situation before it, the tribunal may and should consider the legitimate interests, as well of the carrying companies as of the traders and shippers; and in consideration whether any particular locality is subject to an undue preference or disadvantage, the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment; and when the act says that no locality shall be subjected to an undue or unreasonable prejudice or disadvantage in any respect whatsoever, it does not mean that the Commission is to regard only the welfare of the locality or community where the traffic originates or where the goods are shipped on the cars. The welfare of the locality to which the goods are sent is also under the terms and the

spirit of the act to enter into the question. P. & R. Ry. Co. v. U. S., 219 Fed., 989, 995, 996.

(b) No duties are delegated to the Commission under, and it cannot assume to interpret or determine the purpose or scope of, the so-called public highways act or of statutes under which rights and privileges may be reserved to the United States in return for subsidies in lands or bonds or loan of credit. U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 524.

(bb) The Commission is not deprived of jurisdiction to consider the merits of the controversy merely because delegation to the officers presenting the complaint of the right to do so in the name of the United States is not affirmatively shown. U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 520.

(c) The Commission is not authorized to treat carriers collectively as a single unit or system. Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547.

(d) The Commission is given jurisdiction over traffic from a point in the United States to a point in Canada, and may undoubtedly act upon the American lines over which it has jurisdiction. Rates on Soda Ash and Other Commodities, 28 I. C. C. 613, 614.

(e) The public may require the Pennsylvania lines to handle cars to and from industries upon its terminal tracks in the city of Pittsburgh, and the present power of the Commission is adequate to that end. Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 628.

(f) Market quotations offered to show advantage enjoyed by Omaha over Kansas City. There is no difference in the intrinsic value of like grain in the two markets and rates cannot be adjusted merely to equalize market conditions. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 686.

(g) Complaint seeking order requiring narrow-gauge line to restore part of its tracks it had destroyed, dismissed for want of jurisdiction. Richmond-Eureka Mining Co. v. Eureka Nevada Ry. Co., 29 I. C. C. 62.

(hi) Not duty of Commission to administer Anti-Trust Act. Lumber Rates from Oregon and Washington, 29 I. C. C. 609, 618; Rates on Green Fruit from Idaho, etc., 29 I. C. C. 650, 651.

(j) The law has not conferred on the Commission the power of aiding general prosperity or of introducing new economic policies through railroad rates. The Five Per Cent Rate Case, 31 I. C. C. 351, 425.

(k) Clearly, when the proposed rates involve increases or decreases they are new rates, and as to them the Commission's jurisdiction is full and complete by virtue of the second paragraph of section 15. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508.

(l) Where new rates are filed the Commission, under section 15, is authorized, on its own initiative, to determine the propriety of such new rates and, pending such determination, to suspend the operation of the schedules stating such new rates. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508.

(m) Regardless of the terms, a contract cannot oust the Commission of its jurisdiction. Milwaukee Produce & Fruit Exchange v. Crosby Transportation Co., 30 I. C. C. 653, 655.

(n) It is the duty of the Commission to keep itself informed regarding the manner in which the railway business is conducted, and a knowledge of the variations in unit costs is valuable even if no rates are based thereon. In re Separation of Operating Expenses, 30 I. C. C. 676, 679.

(o) The Commission is an administrative body created to effect substantial justice in matters under its control. Gulf Lumber Co. v. M. D. & T. R. R. & S. S. Co., Unrep. Op. A-574.

(p) The powers and functions of the Commission are those, and only those, conferred by Congress. Five Per Cent Case, 32 I. C. C. 325, 329.

(q) Commission should have power to examine records and papers of subsidiary corporations. Financial Investigation of the N. Y. N. H. & H. R. R. 31 I. C. C. 32, 70.

(r) It was not the intention of Congress broadly to require every claim for damages of any character arising under the interstate commerce act, or from any illegal refusal by an interstate carrier to deliver freight on which the proper charges have been prepaid, to be submitted to the Interstate Commerce Commission before suit can be filed. W. & A. R. Co. v. White Provision Co. (Ga., 1914), 82 S. E. 644, 645.

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(tu) In order to get relief from an unreasonable interstate rate, and have a reasonable one established, the initial step must be taken with the Commission. Its jurisdiction in that respect is exclusive. If in condemning the rate the Commission recommended reparation of the overcharge, whether requested or not, certainly that fact cannot be urged against the prosecution of this action, when there is no attempt to recover the same damage. The basis of this action is a series of wrongful acts, each repeated many times, and all of them go to produce one result, and the damage from that one result is this cause of action, which is almost entirely beyond the cognizance of the Interstate Commission. By way of damage relief, the Commerce Commission has but little power. The only binding and effectual order, if made in this case, was in the establishment of a reasonable rate. Its award of damages, as before stated, amounted merely to a recommendation, and its value to appellee, in the event appellant refused to be governed by the recommendation, was only as prima facie evidence, which it might use to support a cause of action. Its orders as to reasonableness of a rate are conclusive, and, when once the principle of a rate or classification of a commodity has been approved or condemned by the Commission, it is given general application; and any shipper who has been or may be affected may take advantage of the ruling and seek reparation. He may seek the reparation either before the Commission or before the court; but, if before the Commission, the only relief it can afford is a recommendation, for it cannot compel payment. Its order in this respect is only prima facie correct. L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky., 1914), 170 S. W. 633, 642.

(v) Considerations of expediency should have no weight in deciding whether or not the Commission should assume jurisdiction. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52.

(w) Duty of the Commission to nullify practices resulting in rebating or preferences. Industrial Railways Case, 32 I. C. C., 129, 131, 132.

(x) The law authorizing the Commission in dealing with the amount of a rate limits authority to fixing of that which is the maximum reasonable for the service to be performed. New York Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C., 212, 215.

(y) Not duty of Commission to equalize rates as crops change. Board of Trade of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C., 297, 311.

(z) Commission's powers and functions are only those conferred by Congress. Five Per Cent Case, 32 I. C. C., 325, 329.

(aa) Commission will give heed to peculiar facts of case if any exist. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C., 568, 573.

(bb) The Commission is merely an administrative agency to execute the act passed in pursuance to public policy established by Congress. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C., 690, 698.

(cc) The distribution to shippers of coal cars, including those owned by shippers and those used by the carrier for its own fuel, in interstate commerce, is a matter involving preference and discrimination, and one for investigation by the Interstate Commerce Commission. W. & A. A. R. R. Co. v. White Provision Co., 82 S. E. 644.

(dd) The legal maxim that one will not be permitted to accomplish in an indirect way that which he could not legally do directly, has as much application before the Commission as in a court of law. Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C. 645, 648.

(ee) Complainant attacked a charge of $40 for feeding, watering and resting a carload of horses, in compliance with the 28-hour law, at Schenectady, N. Y., before forwarding to destination, as unreasonable. The shipment arrived without a caretaker, and defendant, having no facilities for performing the service, entrusted the shipment to a liveryman who charged defendant $40 for the service, which defendant collected with the

freight charges. HELD that the commission had no jurisdiction of the matter, the provisions of the 28-hour law not vesting the commission with authority to enforce its provisions. Complaint dismissed. Streever Lumber Co. v. C. M. & St. P. Ry., 34 I. C. C. 1, 2.

(ff) The act of Congress of June 29, 1906, known as the 28-hour law, does not vest in this Commission authority to enforce its provisions. It is a penal statute, and the penalty for its violation is explicitly stated. As its title indicates, the law in question was primarily intended to prevent cruelty to animals, a matter which is obviously without the commission's jurisdiction. The Commission possesses only such powers as were conferred upon it by the act to regulate commerce, and nothing in that act requires carriers to rest animals in transit. Streever Lum. Co. v. C. M. & St. P. Ry., 34 I. C. C. 1, 2.

(gg) The United States Supreme Court has repeatedly stated that the whole scope of the Act shows it to have been intended that the Commission and not the courts shall pass upon administrative questions. Pennsylvania Paraffine Works v Penn. R. R., 34 I. C. C. 179, 190.

(hh) A contention that to require the carrier to purchase additional equipment may involve a demand that the carrier increase its capital account, and the power of the Commission can only properly be determined by a consideration of its right to require such action on the part of the railroads, is not sound, because the question of the financial ability of any carrier would be a matter for consideration in judging of the reasonableness of the request for special or additional equipment and would be one of the matters considered by the Commission in judging the particular case when the same arises. Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C., 179, 192.

(ii) The Commission cannot attempt in the exercise of power conferred upon it by the Act it administers, to overcome or modify commercial conditions. Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414, 420.

(jj) It is not the function of the Commission to adjudicate the rights of shipper and consignee under a contract of sale. Ludowici-Celadon Co. v. F. E. C. Ry., 35 I. C. C. 81, 82.

(kk) The powers possessed by the Commission are limited by the terms and spirit of the Act by which those powers are conferred or delegated. The policy of Congress has been and is to encourage competition between carriers. The Commission has no power to prescribe a minimum charge for any service or the maximum service that shall be performed for any charge. It may not take "the steps necessary" to prevent a carrier from maintaining a rate lower than the Commission would prescribe or from performing for a given rate more service than it would require. Rates in Chicago Switching District, 34 I. C. C. 234, 241.

II. PRIMARY JURISDICTION.

See Actions at Law.

§2. In General.

(a) In 17 I. C. C. 552, the Commission reduced gathering rates on citrus fruits, pineapples and vegetables, from Florida points of production on the F. E. Ry. to the basing point at Jacksonville, Fla.; such reduction was made because of increased tonnage shown to exist on similar traffic handled by the S. A. L. Ry. and the A. C. L. R. R., though no evidence was adduced tending to show that similar conditions existed with respect to the F. E. C. Ry. HELD, that the order of the Commission directing such reductions should have been enjoined. F. E. C. Ry. Co. v. United States., 34 Sup. Ct. 867, 873, 234 U. S.——., 58 L. ed.——, reversing 200 Fed. 797, refusing to enjoin the Commission's order in 17 I. C. C. 552.

(b) Mere insistence by a carrier upon the absence of a scheduled rate as a pretext and device for preventing a shipment of cross-ties over its line under joint through rates, will not justify resort by the carrier to the courts in the absence of advance action by the Commission. T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 889, 234 U. S.——, 58 L. ed.——.

(bb) Acceptance by a carrier of interstate shipments of railway crossties destined to a point beyond its line, under its joint through lumber rate, does not authorize suit by shipper for damages for failure to accept further shipments, in the absence of previous action by the Commission, where the carrier bases its refusal on the absence of any applicable

filed and published rate, contending that ties are not covered by its tariff fixing joint through lumber rates. T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 889, 234 U. S. —, 58 L. ed. —.

(c) Under the statute the carrier has the primary right to fix rates, and, so long as they are acquiesced in by the Commission, carrier and shipper are alike bound to treat them as lawful. Where action is based on unreasonable charges, there is no law fixing what is unreasonable, and the whole scope of the statute shows it was intended that the Commission, not the courts, should pass on that question. Geraty v. A. C. L. R. R. Co., 211 Fed. 227, 230.

(d) A reparation order entered May 1, 1911, which required payment on or before July 15, 1911, held not void, for the reason that defendant's motion for rehearing, seasonably filed, was not acted upon until Oct. 9, 1911, and the original order had never been extended. St. L. S. W. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 593.

(e) Under section 15, the Commission on its own initiative, may enter upon an investigation, and determine and prescribe just and reasonable rates. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508.

(f) To maintain a suit for damages for discrimination in switching facilities on intrastate shipments, it is not necessary that the matter be first submitted to the Interstate Commerce Commission. Hocking Valley R. R. Co. v. New York Coal Co., 217 Fed. 727, 735.

(g) In ratemaking cases the weight to be given to evidence relating to rates which the carrier insists had been enforced by competition is peculiarly a matter for the Commission, "a body experienced in such matters and familiar with the complexities, intricacies and history of ratemaking in each section of the country." And even the prima facie evidential effect of testimony may be sufficient to support the order of a ratemaking Commission. Louisville R. R. v. Kentucky Commission, 214 Fed. 465, 469. And, in general, as a matter of fixing reasonable rates has been committed to the Commission, the courts, which have not been vested with any such power, cannot interfere with the rates fixed by the Commission, "unless it is plainly made to appear that those ordered are void." Atchison Ry. v. U. S., 232, U. S. 199, 221, 34 Sup. Ct. 291, 297, 58 L. Ed. 568. Like considerations, 216 Fed. 673, 680, must necessarily govern in determining the effect of evidential facts found by the Commission as substantially supporting its conclusions. L. & N. R. R. Co. v. United States (Tenn., 1914), 216 Fed. 673, 680.

(h) In an order to get relief from an unreasonable interstate rate, and have a reasonable one established, the initial step must be taken with the Commission. Its jurisdiction in that respect is exclusive. If in condemning the rate the Commission recommended reparation of the overcharge, whether requested or not, certainly that fact cannot be urged against the prosecution of this action, when there is no attempt to recover the same damage. The basis of this action is a series of wrongful acts, each repeated many times, and all of them go to produce one result, and the damage from that one result is this cause of action, which is almost entirely beyond the cognizance of the Interstate Commission. By way of damage relief, the Commerce Commission has but little power. The only binding and effectual order, if made in this case, was in the establishment of a reasonable rate. Its award of damages, as before stated, amounted merely to a recommendation, and its value to appellee, in the event appellant refused to be governed by the recommendation, was only as prima facie evidence, which it might use to support a cause of action. Its orders as to reasonableness of a rate are conclusive, and when once the principle of a rate or classification of a commodity has been approved or condemned by the Commission, it is given general application, and any shipper who has been or may be affected may take advantage of the ruling and seek reparation. He may seek the reparation either before the Commission or before the court, but, if before the Commission, the only relief it can afford is a recommendation, for it cannot compel payment. Its order in this respect is only prima facie correct. L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky., 1914), 170 S. W. 633, 642.

(i) The determination of the reasonableness of a rule or regulation in a tariff is within the exclusive jurisdiction of the Interstate Commerce Commission,

and a state court is without jurisdiction to pass upon that question, or even to consider it. So. Pac. Co. v. Frye & Bruhn (Wash., 1914), 143 Pac. 163, 166.

§3. Finality of Findings.

See Allowances, §3; Courts, §13 (d), (e); Procedure Before Commission, §11.

(a) Under the amendment of 1906, the determination of the Commission as to the facts is final and binding, subject to the qualification that it must be supported, not by a mere scintilla of proof, but by substantial evidence. L. & P. Ry. Co. v. United States, 209 Fed. 244, 252.

(b) Arbitrary action may be predicated on a disregard by the Commission of the very criteria which it adopts to determine ultimate questions of fact, or on the adoption of distinctions without real differences. L. & P. Ry. Co. v. United States, 209 Fed. 244, 251.

(c) A carrier contracted to allow a shipper 20c per ton for "spotting" cars on its tracks in its own yards. The carrier, having been indicted in the federal courts for having made such payments, refused to make further payments, whereupon the shipper filed complaint with the Commission under section 15 of the Interstate Commerce Act, authorizing the Commission to fix reasonable charges where services are rendered by a shipper in connection with transportation. The Commission, in 14 I. C. C. 238, 245, rendered a decision against the shipper. HELD, in an action for freight by the carrier in which the shipper sought to set up a counter-claim for "spotting" cars, that the decision of the Commission, not having been modified or reviewed in any form, was final and conclusive as between the parties. N. Y. Cent. & H. Ry. Co. v. General Electric Co., 146 N. Y. Sup. 322, 335.

(d) An award of the Commission is not a judgment in the sense that it concludes the enforcement of the claim upon which it rests in a court otherwise having jurisdiction of the cause of action. The award is merely prima facie evidence of the facts contained therein in an action brought on it in a state or federal court; and when introduced in evidence to support a claim, is open to attack and may be wholly discredited. Clark Bros. Coal Mining Co. v. Pennsylvania Ry. Co. (Pa. 1913), 88 Atl. 754, 761.

(e) Though shippers, in contracting with a carrier for the construction of industrial spur tracks to their establishments, consent to a special charge for the receipt and delivery thereon of freight by the carrier, such service is performed subject to the law of the land requiring that the carriers' charge shall not be unreasonable or unjustly discriminatory, and if it become apparent that the shippers are subjected to arbitrary and unwarranted exaction, they are not estopped from bringing the matter before the Commission, nor from securing its order directing the carrier to stop the objectionable practice. Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 819; 234 U. S. —; 58 L. ed. —.

(f) The findings of the Commission that certain industrial spur tracks in a certain city constitute part of a carrier's terminals, and that under the conditions there existing the receipt and delivery of goods on such spurs was a like service as compared with the receipt and delivery of goods at team tracks and freight sheds, are conclusions of fact, which, if based upon the evidence, are not open to review. Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 819; 58 L. ed. —; 234 U. S. —.

(g) The statute contemplates that the Interstate Commerce Commission shall not only have power to determine as to whether any given rate is reasonable, but shall also have the power to determine as to whether any given rate is confiscatory, and that in a case like the one at bar, if the railroad, the complainant here, is dissatisfied as to the decision of the Interstate Commerce Commission, that it is its duty under the statute (Sec. 16a) to apply to the Commission for a rehearing, in order that it may offer any additional evidence bearing on the question of the unreasonableness of the rate. and as to whether the rate is confiscatory. Subject to this exception: That if the Commission had refused to hear any testimony that was material on the question as to whether the rates were confiscatory or unreasonable, then this court would be inclined to hear such testimony; but, it appearing that no effort has been made on the part of the railroad to present to the Commission this additional testimony bearing on the question as to whether the rates were confiscatory, it would not be proper for us

to consider evidence of that character; and we will exclude the evidence presented by the complainant and hear only the testimony contained in the record which was before the Commission at the hearing of the case. L. & N. R. R. Co. v. United States, 218 Fed. 89, 90.

(h) Congress having assumed exclusive authority over interstate commerce, and invested the Commission with power to control rates, rules and regulations affecting the carriage of property in trade from state to state, the Commission's approval of those rates, rules and regulations is conclusive of their justice and reasonableness as between the shipper and the carrier in any litigation of this sort. Zoller Hop Co. v. So Pac. Co. 143 Pac. 931, 935.

(i) The Court in substituting its judgment as to the existence of preference for that of the Commission, on the ground that where there was no dispute as to the facts it had a right to do so, obviously exerted an authority not conferred upon it by the statute. It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which, from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case, preference or discrimination existed. The amendments by which it came to pass that the findings of the Commission were made not merely prima facie but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases supra, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It cannot be otherwise, since if the view of the statute upheld below be sustained, the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action. U. S. v. L. & N. R. R. Co., Sup. Ct. Rep. 35, 113, 114; 235 U. S. 314; 236 U. S. 318; 59 L. ed.

(j) The determination whether in particular instances there has been an undue or unreasonable prejudice or preformance is a question of fact. Interstate Commission v. Alabama Ry., 168, U. S., 144, 170, 18 Sup. Ct. 43, 42 L. Ed. 414. It necessarily follows that the court in determining whether the conclusions of the Commission as to the discriminatory and preferential practices is supported by the evidential facts set forth in the report, is to be governed by the same considerations as those hereinabove set forth in reference to its conclusion as to the reasonableness or unreasonableness of rates. And, as in the case of rates prescribed by the Commission, the court cannot interfere with practices established by it, "unless it is made plainly to appear that these ordered are void." L. & N. P. Co. v. United States, 216 Fed. 673, 682, 683.

(k) Where a report of the Commission, when considered as a whole, affords substantial support to its conclusion and is not contrary to the indisputable character of the evidence and does not necessarily involve any dominating error of law, but merely a determination of the precise evidential weight of such facts, the judgment of the court cannot be substituted for that of the Commission. L. & N. R. R. Co. v. United States, 216 Fed. 673, 681.

(l) As a matter of law an order of the Commission finding discrimination has been exercised against a given locality served by a number of railroads, must be supported by evidence which is sufficient to warrant a finding separately against each railroad named in the order. Merely because there was evidence before the Commission to justify the finding of discrimination by some does not give it authority to enter an order against all of the railroads, parties to the hearing. St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed. 80, 82.

(m) The situation in this case embraces two localities, and the welfare of the locality to which the commodity involved was sent enters as readily into the situation as the welfare of the locality from which it was sent. If the jurisdiction of the Commission were restricted to the regulation of the railroads, as distinguished from the regulation of commerce, the question presented might be different; but as the function and jurisdiction of the Commission is the regulation of commerce and not the regulation of railroads, except in so far as they are instruments of commerce, the question resolves itself into the power of the Commission to regulate commerce between the localities affected by the rate in controversy. The Commission has found, as a matter of fact,

that in excepting participation in the relative rates established by all carriers from the Lehigh district points of distribution, commerce in cement between Evansville and Jersey City has been impeded, traffic arrested, undue advantage afforded shippers from other points in the same shipping district and undue prejudice and discrimination exerted against purchasers in the purchasing district. This finding of fact cannot be disturbed by this court if the Commission in so finding acted within its powers. It is difficult to lay down any general principle defining or limiting the purpose of the act and the power of the Commission created under it, and such is not attempted in this case; but under the facts of this case, a finding by the Commission of undue discrimination, effected by the rate imposed, was within its power, and as that finding was a finding of fact, concerning the wisdom or expediency of which this court has nothing to do, the order should not be disturbed. P. & R. Ry. Co. v. U. S., 219 Fed., 989, 995, 996.

III. OVER PROCEDURE.

§4. Examiners.

(a) Under the Interstate Commerce Act the Commission is not authorized in the general performance of its duty to obtain, through duly authorized examiners, direct access to the general correspondence of carriers. United States v. N. C. & St. L. Ry. (Tenn., 1914), 217 Fed. 260, 264.

(b) Section 20 of the Interstate Commerce Act under which the Commission is empowered to appoint agents or examiners with authority to inspect and examine accounts, records, and memoranda, and penalizing failure to comply with the orders of the Commission concerning such accounts, records, and memoranda, or the falsification thereof, or the wilful destruction or mutilation thereof, or the failure to make full, true, and correct entries in such accounts, records and memoranda of all facts and transactions pertaining to the carrier's business, or keeping any other accounts, records, and memoranda does not give the Commission power to examine the internal correspondence of an interstate carrier relating to its business. U. S. v. L. & N. R. Co., 35 Sup. Ct. 363, 368; 235 U. S. 314; 236 U. S. 318; 59 L. ed.

(c) Section 12 of the Interstate Commerce Act, providing for the production of evidence in certain cases, does not give authority to examiners of the Commission, so as to enable them to investigate private records of an interstate carrier. U. S. v. L. & N. R. R. Co., 35 Sup. Ct. 363, 366; 235 U. S. 314; 236 U. S. 318; 59 L. ed.

(d) The primary object to be accomplished by section 20 of the Interstate Commerce Act was to establish a uniform system of accounting and bookkeeping, and to have an inspection thereof. If it intended to permit the Commission to authorize examiners to seize and examine all correspondence of every nature, Congress would have used language adequate to that purpose. A sweeping provision of that nature attended with such consequences, would not be likely to have been enacted without probable exceptions as to some lines of correspondence required to be kept open and subject to inspection upon demand of the agents of the government. U. S. v. L. & N. R. Co., 35 Sup. Ct. 363, 369; 235 U. S. 314; 236 U. S. 318; 59 L. ed.

§5. Orders.

See Courts, §12 (b); Divisions, §1 (g); Procedure Before Commission, IV; Reasonableness of Rates, §7 (a).

(a) Where the finding and order of the Interstate Commerce Commission in a reparation suit contains every fact essential to a recovery in a suit brought in a United States district court to enforce the order except the service of the order itself, and the refusal of the carrier to comply with it, such findings and order are admissible in evidence although they contain some irrelevant matter. Meeker v. Lehigh Valley R. R., 35 Sup. Ct., 337, 339; 236 U. S. 412, 434, 59 L. ed.

(b) If the order made by the Commission does not contravene any constitutional limitation, and is within the constitutional and statutory authority of that body, and not unsupported by testimony, it cannot be set aside by the courts, as it is only the exercise of an authority which the law vests in the Commission. Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370, 373; 236 U. S. 351, 59 L. ed.

(c) A report of the Interstate Commerce Commission need only state the ultimate facts rather than the evidentiary facts, and where in a report awarding reparation for discrimination in fur-

nishing coal cars the report of the Commission showed: (1) the relation of the parties as shipper and carrier in interstate commerce; (2) the character and amount of the traffic out of which the claims arose; (3) the rates paid by the shipper for the service rendered and whether they were according to the established tariff; (4) whether and in what way unjust discrimination was practiced against the shipper from November 1, 1900, to August 1, 1901; (5) whether, if there was unjust discrimination, the shipper was injured thereby, and, if so, the amount of his damages; (6) whether the rate collected from the shipper from August 1, 1901, to July 17, 1907, was excessive and unreasonable, and, if so, what would have been a reasonable rate for the service; and (7) whether, if the rate was excessive and unreasonable, the shipper was injured thereby, and, the amount of his damages, such report was a compliance with the requirements of the Interstate Commerce Act, since such findings were easily separated from other matter contained in the report. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 335; 236 U. S. 412, 434; 59 L. ed.

§6. Witnesses.

See Immunity of Witnesses.

(a) Under a senate resolution requesting the Interstate Commerce Commission to ascertain who were the beneficiaries of certain investments of the N. Y. N. H. & H. R. R. Co. and whether such beneficiaries could be required to make restitution to the stockholders of that line and whether its officers were responsible for the same and amenable to punishment and what legislation the Commission might recommend to prevent the recurrence of the evil, does not give the Commission power to compel the attendance and testimony of witnesses and the production of papers, as it does not relate to any specific violation of the Interstate Commerce Act or to matters which might have been the object of complaint before the Commission. U. S. v. Skinner, 218 Fed. 870, 873.

(c) The power of the Interstate Commerce Commission to compel the attendance and testimony of witnesses and the production of documents embraces only complaints for violation of the act, and investigations by the Commission upon matters that might have been made the object of the complaint. U. S. v. Skinner, 218 Fed. 870, 872.

§6½. Investigations in General.

See Advanced Rates, §21.

(a) Section 20, authorizing the use of mandamus, does not authorize the use of that remedy in aid of an investigation by the Commission, pursuant to a senate resolution, to compel a railroad to disclose the amount of its stocks and bonds owned or controlled by another line, and whether the two lines serve the same territory and under separate ownership would be competitors. United States v. L. & N. R. R. Co., 212 Fed. 486, 492.

IV. OVER RAILROADS.

§6¾. Documents and Correspondence.

See Correspondence.

(a) The provisions of Sec. 20 of the Act in reference to the "account records and memoranda" to be kept by common carriers are to be construed in the light of the well-settled principles governing the construction of statutes in derogation of the common law and of a penal nature; and they are to be read not only in connection with the other provisions of the Act, in reference to the obtaining of information by the Commission through other methods than direct examination, in which broad language is used in marked contrast to the limited phrase "accounts, records and memoranda," but also, in such manner that, if reasonably possible, these words may be given the same meaning wherever used, and a harmonious and consistent construction given to the several provisions of the act in reference thereto. "Accounts, records and memoranda" of common carriers to which the Commission is given the right of access and examination are those whose form it is by the sentence immediately preceding, authorized to prescribe; and that the phrase, "accounts, records and memoranda" as used in this section of the Act does not relate to correspondence or other original papers or documents in the possession of the carriers, constituting part of their business acts and transactions, but to the records of such acts and transactions, including the movements of traffic as well as accounts of receipts and expenditures, which the carriers are required to enter "on the books and in the manner" and forms which the Commission may prescribe, constituting book entries of their acts and transactions, in the natures of a general system of accounting which shall be at all times subject to inspection and examination by the Commission.

United States v. N. C. & St. L. Ry., 217 Fed. 260, 263.

(b) Section 20 of the Interstate Commerce Act does not indicate that Congress in the original act or the amendment intended to provide for the compulsory inspection of correspondence. U. S. v. L. & N. R. Co., 35 Sup. Ct., 363, 369; 235 U. S. 314; 236 U. S. 318; 59 L. ed.

(c) The right of inspection and examination given by the Interstate Commerce Act by the amendment to sec. 20 was not intended to be limited to such accounts, records, and memoranda only as were made after the passage of the Act, but is intended to permit an examination of all such accounts, records, and memoranda, for the purpose of carrying out the provisions of the 363, 369, 235 U. S. 314, 236 U. S. 318, 59 L. ed.

V. OVER RATES.

§8½. In General.

(a) In rate-making cases the weight to be given to evidence relating to rates which the carrier insists had been enforced by competition, is peculiarly a matter for the Commission, " a body experienced in such matters and familiar with the complexities, intricacies and history of rate-making in each section of the country." And, even the prima facie evidential effect of testimony may be sufficient to support the order of a rate-making Commission. Louisville R. R. v. Kentucky Commission (D. C. E. D. Ky.) 214 Fed. 465, 469. And, in general, as a matter of fixing reasonable rates has been committed to the Commission, the courts which have not been vested with any such power, cannot interfere with the rates fixed by the Commission, "unless it is plainly made to appear that those ordered are void." Atchison Ry. v. U. S., 232, U. S., 199, 221, 34 Sup. Ct. 291, 297, 58 L. Ed., 568. Like considerations must necessarily govern in determining the effect of evidentiall facts found by the Commission as substantially supporting its conclusions. L. & N. R. R. Co. v. United States, 216 Fed 673, 680.

(aa) The Commission is not authorized to fix a minimum rate. Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547.

(b) Reparation and rates may be dealt with in one order, though awarding reparation for the last and fixing rates for the future involve the determination of matters essentially different, one being in its nature essentially private and the other public. One is made by the Commission in its quasi-judicial and the other in its quasi-legislative capacity; but testimony showing the unreasonableness of a past rate may also furnish information on which to fix a reasonable future rate, and both subjects can be, and often are, disposed of by the same order. Baer Bros. Merc. Co. v. D. & R. G. R. R. Co., 34 Sup. Ct. 641, 644; 233 U. S. 479; 58 L. ed. —.

(c) The term "propriety" as used in section 15, does not limit the Commission to considering only the reasonableness of the rate without reference to other considerations entering into its propriety; such as the reasonableness per se, its relative reasonableness, or its preferential or prejudicial character. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 420.

(d) The Act imposes no requirement upon the Commission that in determining a reasonable charge for the interchange movement, it must in some way or other take into its calculations the factor that the charge may be absorbed by a competitor road. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690.

(e) In the absence of evidence to so show, the Commission cannot make a finding of unreasonableness of a rate. National Baggage Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 158.

(f) The law authorizing the Commission, in dealing with the amount of a rate, aside from any question of discrimination, limits its authority to the fixing of that which is the maximum reasonable rate for the service to be performed. The Commission has no power to substitute a proposed new rate for an existing just and reasonable one on the ground that in its judgment it would be wise policy to do so. N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215.

(g) While carriers may take competition into consideration and make rates to meet it, the Commission has never held that it could compel them to do so. The question of policy or expediency in fixing a rate that is lower than a maximum reasonable rate under the law is left to the judgment and discretion of the carrier. N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215.

(hi) The authority granted it under section 15 of the act to regulate commerce to prescribe reasonable rates when it shall be of opinion that the rates fixed by carriers are unreasonable, does not confer absolute or arbitrary power to act on any considerations which the Commission may deem best for the public, the shipper, and the carrier. Its orders must be based on transportation considerations. While it may give weight to all factors bearing either on the cost or the value of the transportation services, it must disregard as well the demand of the shipper for protection from legitimate competition, domestic or foreign, for unlimited markets or for the enforcement of equitable estoppels arising from a justifiable expectation that past rates will be maintained as the demand of the carrier for the maximum under which the traffic will move freely. Eastern Fruit Growers' Asso. v. B. & O. R. R., 33 I. C. C., 343, 353.

(j) Commission may institute inquiry upon its motion. Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32, I. C. C., 100, 104.

(k) Commission has no power to substitute a proposed new rate for an existing just and reasonable rate on the ground that in its judgment it would be wise policy to do so. New York Produce Exchange v. N. Y. C. & H. R. R. Co., 32 I. C. C., 212, 215.

(l) Incorporating into the Interstate Commerce Act the common law of obligation resting upon the carrier to make all its charges reasonable and just and directing the Commission to execute and enforce the provisions of the Act, does not by implication carry to the Commission or invest it with power to exercise the legislative function of prescribing rates which shall control in the future, especially in view of the fact that the statute expressly recognizes the right of the carrier to establish, increase, or reduce rates on the condition of publishing them and filing them with the Commission. A. C. Cheney P. A. Co. v. N. Y. C. & H. R. R. Co., 152 N. Y. Suppl., 285, 292.

§9. Over Interstate Rates.

(a) The right of a railroad company to destroy a part of its line and its duty to restore the same do not present questions for the determination of the Commission, the authority of which with reference to interstate rates is strictly limited by the provisions of the Act to Regulate Commerce. Richmond-Eureka Mining Co. v. E. N. Ry. Co., 29 I. C. C. 62.

(b) The statute contemplates that the Interstate Commerce Commission shall not only have power to determine as to whether any given rate is reasonable, but shall also have the power to determine whether any given rate is confiscatory, and that in a case like the one at bar, if the railroad, the complainant here, is dissatisfied as to the decision of the Interstate Commerce Commission, that it is its duty under the statute, (sec. 16a) to apply to the Commission for a rehearing, in order that it may offer any additional evidence bearing on the question of the unreasonableness of the rate and as to whether the rate is confiscatory. This is subject to the exception: That, if the Commission had refused to hear any testimony that was material on the question as to whether the rates were confiscatory or unreasonable, then a state court would be inclined to hear such testimony; but, it appearing that no effort has been made on the part of the railroad to present to the Commission this additional testimony bearing on the question as to whether the rates were confiscatory. it would not be proper for such a court to consider evidence of that character; and we will exclude the evidence presented by the complainant as contrary to that act and void in that the parties contract with reference to the law. Southern Pac. Co. v. Frye & Bruhn, 143 Pac. 163, 165.

§10. Intrastate Rates.

See State Regulation.

(a) Under section 3 of the Act, the Commission is authorized to control intrastate rates maintained by a carrier under state authority where it finds that unjust discrimination against interstate trade arises from the relation of intrastate to interstate rates, the proviso in section 1, exempting transportation "wholly within one state" from the provision of the act, not applying in such case. H. E. & W. F. Ry. Co. v. United States, 34 Sup. Ct. 833, 839; 234 U. S. —; 58 L. ed. —.

(b) To the extent that state-established rates are permitted to determine the reasonableness of interstate rates,

to that extent must the Commission, as a federal tribunal, be embarrassed by the anomalous situations arising from conflicts between state and federal jurisdictions. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 709.

§11. Suspension.

See Advanced Rates, §1 (4); Reduced Rates, §2.

(a) Under section 15, paragraph 1, the Commission, on its own initiative, whenever it is of the opinion that any rates demanded, charged, or collected are in any way unlawful, may enter upon an investigation, hold full hearings, and determine and prescribe just and reasonable rates. Where new rates are filed the Commission, under section 15, paragraph 2, is authorized by similar means to determine the propriety of such new rates and, pending such determination, to suspend the operation of the schedules stating such new rates. In connection with the latter hearing the statute casts upon the carrier the burden of justifying any increased rates. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508.

§13. Unpublished Rate.

See Unpublished Rates.

(a) Factor of intermediate rates, not on file with Commission, and used in absence of through rate, found unreasonable. Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701, 702.

VI. TO AWARD DAMAGES.

See Reparation.

§14 In General.

(a) The carrier's agent at New York advised complainant that certain carloads of cement consigned to it would be placed for delivery by a stated time. Complainants' teamsters appeared at the yards at the hour designated, but the cement did not arrive for four hours. Plaintiff paid for the waiting teams $13.60 and asked reparation. HELD, that the Commission's jurisdiction over claims for reparation does not extend to claims arising from loss, damage or delay to shipments in transit. Complaint dismissed. Atlas Portland Cement Co. v L. V. R. R. Co., 32 I. C. C. 487.

(b) Commission not authorized to determine whether all damage to shipment of shingles from Stanwood, Wash., and placed in open storage at Minnesota Transfer, Minn., was caused by act of principal defendant in reloading into two open cars. Red Cedar Shingle Mfrs. Asso. v. M. & St. L. R. R. Co., Unrep. Op. A-880.

VII. APPEALS TO COURT.

§15. In General.

(a) Since the Commission is charged with the duty of determining whether a charge is unreasonable, the plaintiff must, as a condition to his right to recover, allege and produce an order from the Commission that the rate charged was unreasonable and therefore illegal. Geraty v. A. C. L. R. R. Co., 211 Fed. 227, 230.

(b) Sections 14 and 16 of the Interstate Commerce Act, as amended by the Act of June 29, 1906, clearly distinguish suits to enforce administrative orders of the Commission, which are in equity, where the only issue is as to the legality of the order, and an action to recover reparation awarded. The latter is not a suit to enforce the order, but an action at law triable by jury, and the proceedings are as in other civil actions, save that the findings and order of the Commission are received as prima facie evidence of the facts recited. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 792.

(c) A finding of the Commission as to the reasonableness, or otherwise, of the rate charged by a carrier in interstate commerce, is an administrative function properly and constitutionally delegated by the legislative power to the Commission, and is, if lawfully made, conclusive. L. V. R. R. Co. v. Meeker, 211 Fed 785, 794.

(d) The finding by the Commission, in an action to recover reparation awarded, that a given rate is unreasonable, while pertinent to the issue, in that it establishes a violation of the Act, is not decisive of the question of liability for damages under section 8, either prima facie or otherwise. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 795.

(e) The Commission is regarded by the courts as a technical authority on railroad rates, and its decisions are given great weight and quoted frequently with approval by the Supreme Court of the United States and other federal courts. Kindel v. C. & S. Ry. Co. (Colo., 1914). 139 Pac. 1105, 1107.

(f) As a matter of law, an order of the Commission finding discrimination has been exercised against a given locality served by a number of railroads, must be supported by evidence which is sufficient to warrant a finding separately against each railroad named in the order. Merely because there was evidence before the Commission to justify a finding of discrimination by some does not give it authority to enter an order against all railroads parties to the hearing. St. L. I. M. & S. Ry. Co. v. U. S. 217 Fed. 80, 82.

(g) In reviewing orders of the Commission. a United States court cannot act as in ordinary appeals in equity where the courts may examine the evidence and substitute its finding of facts for that of the original tribunal Questions of policy and expediency cannot be considered. In short, nothing can be reviewed except questions of law. But in interstate commerce cases, as in all other cases, it is always a question of law whether there is evidence on which the finding can legally be based. St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed., 80, 82.

(h) Where a report of the Commission is not contrary to the indisputable character of the evidence, and does not necessarily involve any dominating error of law, but merely a determination of the precise evidential weight of such facts, the judgment of the court cannot be substituted for that of the Commission. L. & N. R. R. Co. v. United States, 216 Fed. 673, 681.

(i) The Interstate Commerce Commission considered the rate of $1 per ton charged for the interstate transportation of coal from Nashville to certain points in Kentucky, Texas and Alabama and the switching practices of the carriers at Nashville. It found that the rate was unreasonable and should not exceed 80c to 90c per ton and that the railroads should abstain from their then practice with respect to inter-switching interstate carload shipments of coal at Nashville and from maintaining any different practices with respect to switching such shipments from and to the tracks of the Tennessee Central Railroad from that maintained with respect to similar shipments from and to their respective tracks, and should establish and maintain a practice permitting the inter-switching of such shipments from and to the lines of each and every defendant. The report of the Commission set forth the geographical location of the various points involved with the distances and routes; stated that the complainant had offered "innumerable exhibits" of comparisons; that in all these instances the rate attacked yielded the greatest earnings and that the defendant had sought "in elaborate detail" to analyze these comparisons. The Commission simply generally reviewed the evidence submitted, and made its specific findings as above noted. Traffic Bureau of Nashville v. Louisville & Nashville Railroad Company, 20 I. C. C. 533. HELD, that the report of the Commission was sufficiently definite to comply with the requirements of the Interstate Commerce Act, and it appearing therefrom that there was substantial evidence to support the Commission's orders, they could not be enjoined by a United States Court. L. & N. R. R. Co. v. United States, 216 Fed. 672.

(j) It is true that if, upon the facts found by the Commission, its conclusion therefrom plainly involves an error of law, as where it rests, under the undisputed facts, upon an erroneous construction of the Act to Regulate Commerce an order made by the Commission, based upon such error of law, is subject to judicial review. Obviously, however, this rule does not authorize the court to review, as involving an error of law, the conclusion of the Commission upon a question of fact as to the reasonableness or unreasonableness of a given rate, depending upon a consideration of the weight to be given the various evidential facts found by it. The court cannot review the conclusion of the Commission on questions of fact, or substitute its judgment for that of the Commission upon matters of fact within the Commission's province. And accordingly it is well settled that where all the evidence introduced before the Commission is exhibited to the court, its conclusion of fact that a given rate is reasonable or unreasonable will be accepted by the court as final and not reviewed upon the weight of the evidence, unless either there is no substantial evidence supporting such conclusion or such conclusion is contrary to the indisputable character of the evidence; in which cases the conclusion involves an error of law and is therefore reviewable by the court. L. & N. R. R. Co. v U. S., 216 Fed. 673, 679.

(k) Where the party complaining of

an order made by the Commission does not exhibit to the court the evidence taken before the Commission, but in lieu thereof, insists that the evidential facts found by the Commission are insufficient to support its conclusion as to the reasonableness or unreasonableness of a given rate, such conclusion of the Commission should be accepted by the court as final and not reviewable upon the evidential weight of such facts, unless it appears not only that the Commission undertook to embody in such findings all the material facts established by the evidence, but, in addition, either that the evidential facts so found furnish no substantial support to such conclusion, or that such conclusion is contrary to the indisputable character of such evidential facts; in which cases the conclusions would involve an error of law reviewable by the court. L. & N. R. R. Co. v. U. S., 216 Fed. 673, 679, 680.

(l) Furthermore, in determining whether the conclusion of the Commission is supported by substantial evidence, the court does not consider the expediency or wisdom of the order, or whether on like testimony it would have made a similar ruling; and it ascribes to the findings of the Commission, which are made by law prima facie true, "the strength due to the judgments of a tribunal appointed by law and informed by experience." Interstate Commission v. Union Pacific R. R., 222 U. S., at page 547, 32 Sup. Ct., at page 111, 56 L. Ed., 308. Nor does the validity of an order made by the Commission depend upon the correctness of each of its separate findings as indispensable links in the chain of proof upon which it is based, where the ruling may still be sustained although some of the collateral findings, which if correct would be confirmatory thereof, are eliminated; the question being "whether there was substantial evidence to support the order. L. & N. R. R. Co. v. U. S, 216 Fed. 673, 680.

(m) It is true that if, upon the facts found by the Commission, its conclusion therefrom plainly involves an error of law, as where it rests, under the undisputed facts, upon an erroneous construction of the Act to Regulate Commerce, an order made by the Commission, based upon such error of law, is subject to judicial review. Obviously, however, this rule does not authorize the court to review, as involving an error of law, the conclusion of the Commission upon a question of fact as to the reasonableness or unreasonableness of a given rate, depending upon a consideration of the weight to be given the various evidential facts found by it. The court cannot review the conclusion of the Commission on questions of fact, or substitute its judgment for that of the Commission upon matters of fact within the Commission's province. And accordingly it is well settled that where all the evidence introduced before the Commission is exhibited to the court, its conclusion of fact that a given rate is reasonable or unreasonable will be accepted by the court as final and not reviewed upon the weight of the evidence, unless either there is no substantial evidence supporting such conclusion or such conclusion is contrary to the indisputable character of evidence; in which case the conclusion involves an error of law and is therefore reviewable by the court. L. & N. R. R. Co. v. U. S., 216 Fed. 673, 679.

(n) In determining whether the conclusion of the Commission is supported by substantial evidence, the court does not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling; and it ascribes to the findings of the Commission, which are made by law prima facie true, "the strength due to the judgments of a tribunal appointed by law and informed by experience." Interstate Commission v. Union Pacific R. R., 222 U. S., at page 547, 32 Sup. Ct., at page 111, 56 L. Ed. 308. Nor does the validity of an order made by the Commission depend upon the correctness of each of its separate findings as indispensable links in the chain of proof upon which it is based, where the ruling, may still be sustained although some of the collateral findings, which if correct, would be confirmatory thereof, are eliminated; the question being "whether there was substantial evidence to support the order." L. & N. R. R. Co. v. U. S., 216 Fed. 673, 680.

(o) In reviewing orders of the Commission, a United States court cannot act as in ordinary appeals in equity, where the courts may examine the evidence and substitute its finding of facts for that of the original tribunal. Questions of policy and expediency cannot be considered. In short, nothing can be reviewed except questions of law. But in interstate commerce cases, as in all

other cases, it is always a question of law whether there is evidence on which the finding can legally be based. St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed. 80, 82.

(p) A brewing company that tenders beer to a railroad for transportation from Oklahoma to Missouri wnich the carrier refused to accept and transport does not have to first apply to the Interstate Commerce Commission for relief, before asking for an injunction, as that body has no jurisdiction over such a case. Royal Brewing Co. v. M. K. & T. Ry. Co. (Kans.), 217 Fed. 146, 148.

INTERVENORS

See Reparation, §6 (aa), §24.

INTOXICATING LIQUORS.

(a) The Interstate Commerce Act, the provisions of which apply to all corporations engaged in the interstate transportation and which declare that the term "transportation" shall include cars, facilities of shipments or carriage, and all services in connection with the receipt, delivery and handling of property transported, and the Wilson Act subjecting intoxicating liquors to the state laws upon arrival; that is, immediately upon delivery making it unlawful to deliver to any person except the consignee, collect the purchase price, or carry C. O. D. shipments, etc., regulate interstate commerce in intoxicating liquors, to the exclusion of all state action on the subject. Palmer v. Southern Express Co. (Tenn., 1914), 165 S. W. 236, 243.

KNOCKED DOWN SHIPMENT

See Classification, §4½.

LABELS

See Classification, §14.

LAND GRANT RAILROADS.

(a) If the denial of certain through routes and joint rates sought tends to deprive the Government of the full benefit of land-grant deductions reserved to it by statute, the remedy must be sought at other hands than from the Commission. U. S. v. U. P. R. R. Co, 28 I C. C. 51, 524.

(b) The legal rate of compensation to which a railroad is entitled for the transportation of property and troops of the United States over a continuous line of railroad part of which is free haul and the remaining part of which is pay-line is the proportion of the through rate applicable to the pay-line. S. P. Co. v. U. S., 35 Sup. Ct., 573, 574; 237 U. S. 202, 59 L. ed.

LEAKAGE

See Allowances, §8 (3½).

LEASE

See Common Carrier, §8 (l); Financial Operation, §1 (aa).

LEGALITY

See Allowances, IV; Blanket Rates, II; Divisions, IV; Proportional Rates, III; Reconsignment, I; Reduced Rates, II; Released Rates, III; Special Contracts, 11; Substitution of Tonnage, 11; Tap Lines, §7; Tariffs, §14.

LEGAL RATE

See Facilities and Privileges, §15 (4u); Land Grant Railroads, (b); Tariffs, §7, §18; Through Routes and Joint Rates, §15½ (b), §17 (a), §22.

LIGHTERAGE.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CHARGES.
§2. In general.
§3. Reasonableness and discrimination.
III. ALLOWANCES.
§4. In general.
IV. THROUGH ROUTES AND JOINT RATES.
§5. In general.

CROSS REFERENCES

See Absorption of Charges, §1 (c); Allowances, §8 (4); Demurrage, §2 (p); Through Routes and Joint Rates, §11 (1), (d).

II. CHARGES.

§3. Reasonableness and Discrimination.

(a) Lighterage companies deliver

freight on docks or in warehouses of consignees without additional charge for unloading. Chicago Lighterage Charges, 28 I. C. C. 390.

III. ALLOWANCES.

See Allowances.

§4. In General.

(a) Defendant railroad companies, whose eastern freight rail terminals were on the New Jersey shore of New York Harbor, held themselves out as ready to take freight at any public or accessible private dock within the free lighterage zone, embracing the commercial and manufacturing river front of Greater New York, and lighter it across the river, without any other charge than that published in their tariffs applicable to freight delivered to them at the New Jersey shore. Within this zone defendants established freight terminal stations, some owned or operated for them by third persons under contract as their agents. One of the latter class of stations was operated by Arbuckle Bros., under contracts whereby, in consideration of operating the station and lightering freight between it and the New Jersey terminals, Arbuckle Bros. were to receive 4-1/5c per 100 lbs. on freight originating at or destined to points west of Trunk Line Territory, and 3c on freight originating at or destined to points east thereof, consignments to or by Arbuckle Bros. being treated in the same manner as the shipments of the general public. The docks of a competitor, the Federal Sugar Refining Co., were located at Yonkers, some 10 miles beyond the limits of the free lighterage zone, and in order to participate in the allowances accorded Arbuckle Bros., it shipped its freight by lighter to pier 24 within the zone, consigned to its city office, where the master of the lighter was handed bills of lading for execution by the carrier upon delivery at the New Jersey shore. The lighter then proceeded with the freight to the New Jersey terminal, where it was delivered. The Commission, in 20 I. C. C. 200, held that upon these facts, unless the Federal Sugar Refining Co. were accorded an allowance identical with that made to Arbuckle Bros., a discrimination in contravention of the Act, would result. HELD, that the circumstances and conditions surrounding the two shippers were so dissimilar as not to make the same rule applicable. The carriers not having established any public station at pier 24, notice and tender were essential. No tender having been made, obviously because the freight when loaded on the lighter was destined for the rail terminals at the New Jersey shore and thence to the real consignee at western points on the carrier's lines, the stopping at pier 24 and the receipt of unsigned bills of lading was not a break in the continuity of transportation, but a subterfuge to give the transaction the appearance of a shipment from pier 24. The claim by the Federal Company was for a lighterage service which the carriers were under no obligation to perform. Judgment of the Commerce Court, reversing the action of the Commission, affirmed. United States v. B. & O. Ry. Co., 34 Sup. Ct. 75, 78, 231 Co. v. U. S., 35 Sup. Ct., 573, 574, 237 U. S. 202, 59 L. ed.

LIMITATION AND LIABILITY

See Bills of Lading, IV; Express Companies, §8 (I), XII; Released Rates, V; Reparation, IV; Routing and Misrouting, III; Special Contracts, III; Undercharges, IV.

LINING AND PADDING

See Allowances, §8 (4½); Cars and Car Supply, §7 (I), §8 (a); Weights and Weighing, §2½ (I).

LIVE STOCK

See Cars and Car Supply, §6¾ (a); Feeding in Transit.

LOADING AND UNLOADING

See Absorption of Charges, §3 (h); Additional Charges, (h), (n); Allowances, §8 (2½), (b); Cars and Car Supply, §7 (y); Classification, §13; Explosives, (h); Facilities and Privileges, §10; Minimums; Reasonableness of Rates, 15½; Transportation, §10.

LOANS

See Crimes, §7 (e); Financial Operation, §1 (v), (w).

LOCAL RATES

See Act to Regulate Commerce,

II (m); Advanced Rates, §5 (2), (h); §19 (a); Basing Points and Lines, §1 (h); Equalization of Rates, §3 (gg) Evidence, §13 (1), (c), §28; Long and Short Hauls, §12 (2), (b); Proportional Rates, III (a), III (c), IV (l); Through Routes and Joint Rates, §13½ (a), §14 (b) §15 (aa), (pp).

LONG AND SHORT HAULS.

I. CONTROL AND REGULATION.
§1. Constitutionality of section 4.
§2. Jurisdiction of Commission.
II. SECTION 4 AS AMENDED.
§2½. Construction in general.
§3. Constitutionality.
§4. Exceptions.
III. APPLICATION OF SECTION 4 TO RATES.
§4½. In general.
§5. Intermediate points.
§6. Intermediate points off line.
IV. COMPETITION AS JUSTIFICATION.
§7. In general.
§7½. Cross-country competition.
§8. Markets.
§9. Railroad.
§10. Water.
V. PROCEDURE.
§11. Complaints and orders.
§12. Evidence.
(1) Burden of proof.
(2) Circumstances of probative force.
§13. Reparation.
§14. Form of fourth section application.

CROSS REFERENCES

See Act to Regulate Commerce, II (c); Advanced Rates, §2½ (x), §5 (2), (ff), (gg), (u), (w), (y); Blanket Rates, §1 (a); Commodity Rates, §2 (f); Discrimination, §5 (h); Distance Rates, §1 (g); Equalization of Rates, §3 (b), (ff); Evidence, §13 (5), (a); Reasonableness of Rates, §12½ (d), (e); Through Routes and Joint Rates, §13½ (n).

I. CONTROL AND REGULATION.

§1. Constitutionality of Section 4.

(a) That the long-and-short-haul clause imposes upon the Commission in a proper case the duty of refusing an application for relief from the rule, does not render the statute void on the ground that in such a contingency the statute would amount to an imperative enforcement of the clause; for a general enforcement of the clause would not be repugnant to the constitution. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 992; 234 U. S. 476; 58 L. ed. —

(b) The Act of June 18, 1910, amending the long-and-short-haul clause is not unconstitutional as being a delegation to the Commission of legislative power which Congress was incompetent to make. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 991; 234 U. S. 476; 58 L. ed. —

§2. Jurisdiction of Commission.

See Commerce Courts, §½ (b), §2 (b), §4½ (a).

(a) While, under the fourth section, the Commission may, in a proper case, authorize a long line to meet the rate of a short line between two points, and at the same time to maintain higher rates from intermediate points, no authority exists whereby a short line may meet the rate of a long line at a competitive point and impose higher rates on intermediate points. Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120, 122.

(b) While the Commission may grant permission to a carrier to establish a rate which contravenes the long-and-short-haul provision of the Fourth Section of the Act, it cannot require any carrier to establish or maintain rates that contravene that rule. Cement Rates from Mitchell, Ind., 32 I. C. C. 93, 95.

(c) The express or implied statutory recognition of the authority on the part of carriers to primarily determine for themselves the existence of substantially similar circumstances and conditions as a basis of charging a higher rate for a shorter than for a longer distance within the purview of the fourth section of the Act to Regulate Commerce, and the right to make a rate accordingly, to continue in force until, on complaint, it was corrected in the manner pointed out by statute, ceased to exist after the adoption of the amendment to section 4. This results from the fact that by the amendment in question, the original power to determine the existence of the conditions justifying the greater charge for a

shorter than was exacted from a longer distance was taken from the carriers and primarily vested in the Interstate Commerce Commission, and for the purpose of making the prohibitions efficacious it was enacted that after a time fixed no existing rate of the character provided for should continue in force unless the application to sanction it had been made and granted. U. S. v. L. & N. R. R Co., 35 Supt. Ct. Rep. 113, 115, 235 U. S. 314, 236 U. S. 318, 59 L. ed.

(d) The Commission is authorized to grant relief to carriers only in special cases after investigation. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 652.

II. SECTION 4 AS AMENDED.

See Act to Regulate Commerce, I (a).

§2½. Construction in General.

(a) A discrimination in favor of a certain locality from interior eastern points may be justified in order to avoid violations of section 4. Atlanta Journal Co. v. S. A. L. Ry., 28 I. C. C. 186, 190.

(b) By section 4 of the Act, it is made unlawful for any common carrier to charge any greater compensation as a through route than the aggregate of the intermediate rates. Hess v. U. P. R. R. Co., Unrep. Op. A-385.

(c) Under the long-and-short-haul clause of the 4th section, previous to 1910, the carrier was permitted to judge primarily of competitive conditions and meet them at its election; though this power was primary, not absolute, since its exertion by the carrier was made the subject both of administrative control and ultimate judicial review. The amendment of June 18, 1910, stated no new rule or principle, but, by the elimination of the "substantially similar circumstances and conditions" clause, simply shifted the power conferred by the section as it originally stood. That is, it took from the carriers the deposit of public power previously lodged in them and vested it in the Commission as a primary instead of a reviewing function. Power in the carrier primarily to meet competitive conditions by charging a lesser rate for a longer than for a shorter haul, has ceased to exist. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 990; 234 U. S. 476; 58 L. ed. —

(d) The principal change in the law resulting from the amendment of 1910 is to the effect that carriers may not upon their own initiative (and before determination by the Commission upon proper application) deviate from the long-and-short-haul rule of section 4; that is, under the present law they must first have a determination of the question by the Commission upon its merits, whereas, prior to the amendment of 1910, they could act upon their own judgment and initiative, their action being subject to subsequent investigation and determination by the Commission. There is nothing to be found in the amendment or elsewhere in the law which justifies the Commission permitting the establishment, or after full hearing the continuance, of a rate unreasonable under the first section, or unduly discriminatory under the third or fourth sections. Rates on Boots and Shoes from Boston, Mass., 31 I. C. C. 154, 157.

(e) Section 4 of the amended act provides that when a rail carrier in competition with a water carrier shall reduce its rates to or from a competitive point, it shall not be permitted to increase such rate unless after hearing by the Commission it shall be found that such increase rests upon changed conditions other than the elimination of water competition. But that clause is a part of the amendment of June 18, 1910, and it applies only to rates reduced subsequent to that date. And in determining the reasonableness of a rate increased or sought to be increased which was reduced prior to that date, the Commission may consider conditions existing without regard to whether or not they are "changed conditions" as compared with the conditions when the rates were reduced. Westbound Lake and Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

(f) Principal change in law resulting from amendment of 1910 is to the effect that carriers may not upon their own initiative deviate from long-and-short haul rule of fourth section. Rates on Boots and Shoes from Boston, 31 I. C. C. 154, 157.

(g) The amendment to the fourth section, prohibiting increases in rates reduced to meet water competition, cannot be applied to points given terminal rates by rail lines many years prior to the passage of such amendment, since the amendment applies only to rates thereafter reduced to meet water competition. Trans-

continental Commodity Rates, 32 I. C. C. 449, 453.

(h) The intent of the fourth section and the aim of the Commission in enforcing its provisions is to reduce discriminations, not to augment them. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 619.

(i) Where no ourth section application is filed, it necessarily follows that joint class rates, in excess of the aggregate of intermediate commodity rates are unlawful. Board of Trade of Kansas City v. C. M. & St. P. Ry., 34 I. C. C., 208, 209.

§4. Exceptions.

See Blanket Rates, §10½ (i); Claims, §2 (i); Class Rates, §2 (i); Discrimination, §4 (t).

(a) Seventeen carriers applied to the Commission for relief from the provisions of the fourth section, their applications covering the whole territory from the Atlantic seaboard to the Pacific Coast and the Gulf of Mexico, embracing practically the entire country. They asked authority to continue all rates on the tariffs presented, from Atlantic to Pacific and contrariwise, and to and from interior points, lower than rates concurrently in effect from and to intermediate points. The Commission refused to grant their petitions unqualifiedly, but entered an order permitting in some respects a charge of a lower rate for the longer haul than was asked for the shorter, provided a proportionate relation was maintained between them, the proportion to be upon the basis of percentages which were fixed. For the purpose of the order the Commission adopted in substance a division of the entire territory into separate zones, which division had been resorted to by the carriers for the purpose of establishing the rates in relation to which the petitions were filed. The carriers contended that under the fourth section, as amended by the Act of June 18, 1910, the Commission was limited to ascertaining the existence of competition, and to authorizing the carrier to meet it, without any authority to do more than exercise its general powers concerning the reasonableness of rates at all points. HELD, that under the fourth section as amended, the Commission is not only authorized to consider competitive conditions and their relation to persons and places, but also the right to do that by which alone it could be exerted, namely, the establishment of zones and percentages. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 994; 234 U. S. 476; 58 L. ed.—reversing 191 Fed. 856, enjoining the order of the Commission in the so-called Intermountain Cases. Followed in United States v. U. P. R. R. Co., 34 Sup. Ct. 995; 234 U. S. 495; 58 L. ed. —.

(aa) The justification for a departure from the fourth section is very frequently based upon the competition of short-line carriers, but where no such competition or other controlling factor is shown, no such defense can successfully be maintained; in other words, a fourth section violation should not extend beyond the real necessities of the competitive or other controlling influences. Emlenton Petroleum Rates, 29 I. C. C. 519, 521.

(b) Upon rehearing carriers' application under the fourth section, requesting authority to charge more for the transportation of lumber from Burlington, Ia., to Higginsville, Mo., than from Burlington to Kansas City, Mo., granted, and the former order in this case revoked. Burlington Lumber Co. v. C. & A. R. R. Co., Unrep. Op. A-170.

(c) Application to continue rates on cement plaster from Eldorado, Okla., to Alice, Tex., which exceed aggregate of intermediate rates denied. United States Gypsum Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-310.

(d) Application under section 4 to charge more as a through route than aggregate of intermediates denied. Archer-Daniels Linseed Co. v. C. M. & St. P. Ry., Unrep. Op. A-277; Stearns & Culver Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-320.

(e) Application to continue lower rates on smithing coal from East St. Louis, Ill., to Salt Lake City and Ogden, Utah, than to Denver, Colo., denied. Moore Hardware & Iron Co. v. D. & R. G. R. R. Co., Unrep. Op. A-392.

(f) The fourth section was intended to restrain carriers from continuing lower rates to more distant than to intermediate points except in special cases where relief from the long-and-short-haul requirement is afforded by the Commission. The fundamental reason for granting relief to any line at a given point is

the meeting at that point of the competition of other carriers against which competition the petitioner is at a disadvantage. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 304.

(gh) Neither Rule o of the Commission's Tariff Circular 18-A, nor any portion thereof, is to be construed as conferring authority to depart from the prohibitions of the fourth section against higher charges for shorter distances. Export Rates on Grain and Grain Products, 31 I. C. C. 617, 620.

(i) Carriers transporting tropical fruits from Gulf ports to various points in Missouri, Oklahoma, Arkansas, Kansas, Iowa, Minnesota, Illinois and Wisconsin, at lower rates than charged to intermediate points, asked leave to continue higher rates to intermediate points. **Rates from Galveston.**—Rates from Galveston, Tex., to Missouri River points, stations basing thereon, and points east thereof, were lower than to intermediate points. Taking Kansas City as typical, the rate of 58c from Galveston on bananas was exceeded at all intermediate points north of the Texas-Oklahoma state line on all lines entering Kansas City, rates to such points ranging from 62c to 70c. The rates were highest to points in Oklahoma and southern Kansas, grading down to 43c at St. Louis, 48c at Hannibal, 56c at Dubuque and 51c at Peoria, Springfield, Chicago and other Illinois points. These rates were established to meet New Orleans rates established to meet competition through the Atlantic ports. The rates via the I. C. Ry., the controlling factor in the establishment of the latter rates, were from New Orleans to Memphis, 35c; to Cairo, 39c; to St. Louis, 43c; to Chicago, 46c, and to St. Paul, Minn., 68c. This compelled the carriers at Galveston to establish lower rates at the more distant points along the Mississippi River and the line of the I. C. R. R. than were required to Kansas City and points west. In 1912 the United Fruit Co., as a condition of importing through Galveston, required a reduction in the rates of 5c to Mississippi River points and 10c to Illinois and Wisconsin points, to bring the rates to these points to the level of the New Orleans rates. Bananas are usually sold at Galveston and New Orleans at the same price, varying from 90c to $2.40 per 100 lbs., but the distance by rail to a large portion of the territory of distribution is greater from Galveston than from New Orleans; for instance, from Galveston to Moberly, Mo., St. Paul, Minn., and Davenport, Iowa, is, respectively, 904, 1,405 and 1,092 miles, while from New Orleans the distances are 899, 1,297 and 953 miles. Thus Galveston, as a port of entry for bananas, is of little importance as compared with New Orleans, 14,796,120 bunches being imported through New Orleans in 1912, to 642,671 imported via Galveston. Galveston is at a disadvantage in meeting the competition of New Orleans lines as to most of the territory east of the Missouri and Mississippi rivers, but direct lines from Galveston are not at a disadvantage as to points on and west of the Missouri. Rates to Kansas City and points north on the Missouri were 5c and rates to points west of the Missouri 10c lower than New Orleans rates; notwithstanding the fact that carriers at Galveston absorbed the loading, terminal and wharfage charges. On the direct route to Kansas City via the G. H. & H. R. R. to Houston, T. & B. V. Ry. to Dallas, and the M. K. & T. Ry. to Kansas City, 806 miles, the rate was 63c; but some of the more circuitous routes carried rates as high as 70c. Some of these 70c rates were to points less than 500 miles from Galveston. Bananas were classd as third class in carloads, and the mileage scales of these carriers indicated that for distances of 500 miles and over the spread in third class rates for additional distances of 25 miles was not more than 2c per 100 lbs. HELD, that carriers transporting tropical fruits from Galveston and other Texas ports to points east of the Missouri and the line of the K. C. S. Ry. should be allowed relief from the fourth section to meet New Orleans competition; (2) that circuitous lines engaged in transporting tropical fruits to points on and west of the Missouri river and the line of the K. C. S. Ry. be granted relief from the fourth section where their lines are 15 per cent longer than the short line between the same points. All other relief prayed denied. **Rates From New Orleans.**—Rates on tropical fruits from New Orleans and related points to points west of the Mississippi River, which did not conform to the fourth section, were due to reductions at more distant points to meet competition of more direct lines; occurring especially in rates of lines running west of the river to points on and east thereof. For instance, the rate via the St. L. I.

M. & S. Ry. and T. & P. Ry. from New Orleans to Memphis was 35c, compelled by the direct line of the I. C. R. R., 396 miles, as compared with 497 miles via the first mentioned route. HELD, that carriers transporting tropical fruits from New Orleans and Port Chalmette, La., Mobile, Ala., and Pensacola, Fla., to points on and west of the Mississippi River, whose lines are 15 per cent longer than the short line between the same points be granted relief from the fourth section. All other relief prayed denied. **Rates on Cocoanuts.**—The disparity between the rates on cocoanuts to the more distant points and the intermediate points was greater than in the case of bananas. Rates from Galveston to Kansas City via the various lines were in each case 40c, while the highest rates to intermediate points were via the C. R. I. & P., 69c; A. T. & S. F., 65c; St. L. & S. F., 64c; M. K. & T., 64c, and K. C. S., 45c. HELD, that the same measure of relief be granted in respect to rates on cocoanuts as on bananas, but the highest intermediate rate between Galveston and Kansas City should not exceed 45c. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 633.

(j) Carriers transporting sugar from New Orleans, La., and points taking the same rates to Ohio and Mississippi River points applied for relief from the provisions of the fourth section, asking authority to continue lower rates to the river crossings than to intermediate points, and also lower rates to various intermediate low-rate points than to stations intermediate to such points. The rates from New Orleans via the Y. & M. V. R. R. to Memphis, Tenn., were C. L., 12c and L. C. L., 15c for 455 miles, and to Darling, Miss., an intermediate point, 34c for 400 miles; via the I. C. R. R. to Grand Junction, Tenn., C. L. 25c and L. C. L. 33½c for 395 miles, and to Waterford, Miss., an intermediate point, 41c for 361 miles; via the L. & N. to Parkwood, Ala, C. L., 27c for 402 miles, and to Birmingham, a low-rate point, 17c for 415 miles. Rates from New Orleans to Cincinnati were 18½c C. L. and 23c L. C. L. for 836 miles, and to all lower Ohio River crossings and St. Louis, Mo., 17c, C. L., and 22c, L. C. L., by all routes. The rail-and-water rate from Philadelphia to Cincinnati, the pivotal point from a market standpoint between the east and New Orleans, was 18c. Both this and the 18½c rate from New Orleans were influenced by water competition. Carload rates from New Orleans to Louisville, St. Louis and Chicago were 17c, 17c and 23c, and from New York 23c, 25c and 26c. Blanket rates of 23c, C. L., and 28c, L. C. L., covered all points on the Q. & C. route to Cincinnati, ranging from 498 to 833 miles from New Orleans, applying to a stretch of territory approximately 300 miles in length, the center of the blanket being in the neighborhood of 650 miles from New Orleans. HELD, the voluntary blanket rates to the non-competitive points bore a reasonable relation to the competitive rates, and that the Q. & C. route should be permitted to charge lower rates on sugar from New Orleans to Cincinnati than to intermediate points between Chattanooga and Cincinnati, the intermediate rates not to exceed 23c, C. L., and 28c, L. C. L. established as maxima as to all other intermediate points, provided that indirect routes may continue to meet the rates of the direct route between New Orleans and any crossing if the indirect route is at least 15 per cent longer than the direct route. **Lexington, Ky.**—Cincinnati and Lexington took approximately the same rates from Philadelphia and from New Orleans, the rate from Philadelphia to Cincinnati being 18c and to Lexington 19c, as against 18½c from New Orleans to both points. This was done because Lexington was considered a gateway between north and south, being midway between the lines leading eastward toward the Buffalo-Pittsburgh zone and those leading to New Orleans. HELD, that relief should be granted to Lexington to the same extent as to Cincinnati. **Destinations in Mississippi Valley Territory.**—Rates to points on the Y. & M. V. R. R. in tne "Riverside district," from three to five miles from the Mississippi River and some stations on the Yazoo River were accorded lower rates than intermediate points because of water competition. The high-rate point on the I. C. R. R. from New Orleans to Memphis, Tenn., was Tillatoba, Miss., 311 miles from New Orleans, which took 37c, C. L., and 40c L. C. L. Many other points on the I. C. R. R. were affected by river competition, and rates to intermediate points were in many instances double the rates to such points. HELD, that higher rates might be maintained by the I. C. R. R. to intermediate points than were maintained to Memphis, not exceeding 20c in carloads and 25c, L. C. L.: and that the

Y. & M. V. R. R. might maintain higher rates to intermediate points than to river points, not exceeding 17c in carloads and 20c L. C. L. **Destinations South of the Ohio and East of the Mississippi Rivers.**—Nashville, 622 miles from New Orleans, was accorded a rate of 17c, the same as the lower Ohio River crossings, the Cumberland River being navigable to that point ten months in the year. To Bowling Green, Ky., 695 miles from New Orleans, a rate of 20c had been established to meet the rates of boats operating on the Green and Barren rivers. To Montgomery, Ala., 318 miles from New Orleans, the rate was 17c. Active water competition existed from boats plying on the Alabama and Tombigbee rivers. The rate from New Orleans to Mobile was 12c, the result of an active traffic between the two points via the Gulf, while Grand Bay, only 115 miles from New Orleans, took a rate of 28c. The rate to Chattanooga, Tenn., 498 miles from New Orleans, was 20c in carloads and 23c, L. C. L. On the Q. & C. route to Chattanooga were also the low rate points, Tuscaloosa, Holt, Akron, Attalla and Birmingham. HELD, (1) that higher rates might be charged to intermediate points than to Nashville, Chattanooga and Bowling Green, not to exceed 23c C. L. and 28c L. C. L.; (2) rates to points intermediate to Montgomery should not exceed 20c; (3) rates to points intermediate to Mobile should not exceed 15c, C. L., and 20c, L. C. L., and that local rates to interior points south of the Ohio must not be exceeded at any point intermediate thereto. Rates on Sugar, 31 I. C. C. 495.

(k) Various applications were filed for relief from the fourth section on transportation of sugar (1) from San Francisco, Cal., and beet-sugar-producing points in California, Nevada, Utah and Arizona to destinations on and east of the Missouri River; (2) from Colorado beet-sugar points to El Paso, Tex.; (3) from New Orleans, La., to El Paso; (4) from New Orleans to Arkansas, Illinois, Iowa, Kansas and other states. Application No. 349 covered rates from California points to Chicago and territory between Chicago and the Missouri River. Rates via the S. P. Ry. and U. P. R. R. increased with distance until in eastern Nevada they became 55c and 60c, minimum 60,000 and 36,000 lbs., respectively, were blanketed from Elko, Nev., to Omaha, Neb. Via the W. P., D. & R. G., and M. P. Rys. rates of 55c or 60c were blanketed from Gerlach, Nev., to Utah common points; 75c, minimum 36,000 lbs., from Grand Junction to Canon City, Colo., from Colorado common points to the Missouri River, 55c and 60c. Via the A. T. & S. F. Ry. rates from San Francisco to Needles, Cal., Flagstaff, Ariz., Albuquerque, N. Mex., and Trinidad, Colo., were 79c, $1.00, $1.00, 60c and 55c for distances of 621, 855, 1,199 and 1,467 miles; Trinidad rates were blanketed to all stations between that point and the Missouri River. Via the S. P., E. P. & S. W., and C. R. I. & P. Rys. the rates from San Francisco to Tucson, Ari., El Paso, Tex., Dawson, N. Mex., and Missouri River points were 93c, 60c, 80c and 60c. Via all routes rates were 60c or 65c, minimum 60,000 or 36,000 lbs., to points east of the Missouri River to and including Chicago. The distance to Denver via the S. P. Ry. was 1,374 miles, via the W. P. Ry. and D. & R. G. R. R., 1,663 miles. Via the A. T. & S. F. Ry. to Trinidad, Colo., 1,465 miles, via the S. P. Ry., U. P. Ry. and C. S. Ry., 1,572 miles. HELD, that respondents were not entitled to continue rates on sugar from San Francisco to the Missouri River and beyond, lower than to intermediate stations via reasonably direct lines. Application No. 675 asked authority to continue lower rates from Colorado beet-sugar-producing points to El Paso, Tex., than to intermediate points. The rate from all these points to El Paso was 49c, for from 600 to 850 miles; while from one of them, Rocky Ford, to Albuquerque the rate was 50c for 357 miles, and to Berino 65c for 586 miles. Competition at El Paso with carriers serving New Orleans, La., and Sugarland, Tex., was assigned as a reason. HELD, that petitioners were not prejudiced either in distance or relative strength and traffic density of the lines involved. Application denied. Application No. 677 asked authority to continue lower rates on sugar from New Orleans to El Paso than to intermediate points. Via the T. & P. Ry. the rate to El Paso, 55c for 1,180 miles, was exceeded at Eagle Flat, 1,074 miles from New Orleans, maximum rate of 58c being at stations Iter to Alfalfa. The G. H. & S. A. Ry. and A. T. & S. F. Ry., longer lines, also discriminated in favor of El Paso. Necessity of preserving parity of rates to the Mexican gateways, El Paso, Eagle Pass and Laredo, was assigned as a reason. HELD, that the first two lines were not entitled

to relief, but the A. T. & S. F. Ry. was entitled to some relief. But rates to El Paso via this line should be exceeded only at stations west of Vaughan. Application No. 1766 asked relief on rates from New Orleans and Louisiana points to Arkansas, Illinois, Minnesota and various other states. First, permission was sought to route sugar from north Louisiana points, usually routed via New Orleans, by other connections and at rates from 2c to 5c above the New Orleans rate, the routes being markedly circuitous. As to points of destination, rates from New Orleans to Cairo and St. Louis were 17c and to Chicago 23c; to points between Cairo and East St. Louis, 20c; between St. Louis and Chicago, 23c; to Missouri, Iowa and Minnesota points north of St. Louis, from 23c to 30c. The latter rates were affected by rail-and-water rates from New York. Rates to points on the Missouri River ranged from 17c to St. Louis to 32c blanketed from Jefferson City to Sioux City, Iowa, and 33½c to stations north; and to upper Mississippi River points from 26c at Keokuk, Iowa, to 30c at De Soto, Wis. The rate from New Orleans to Texarkana was 25c, and to Ashdown 32c, blanketed to Kansas City, while to Memphis, Tenn., and Helena, Ark., the rate was only 12c. Thus on traffic moving northwestwardly across any one of the Minnesota-Louisiana tier of states rates accorded with the fourth section, while traffic moving northeastwardly was carried from higher to lower rated territory. To all important points involved, except those affected by water competition or competition from New York, there was a route via which the fourth section was involved. The rate from New Orleans to Texas common points was 44c, intermediate to eastern Oklahoma points, to which the rate was 40c. Traffic might be routed from Kansas City via the C. B. & Q., U. P., or C. R. I. & P. railways, respectively, 194, 308, and 354 miles, to Omaha. If by the two latter lines it traverses higher-rated territory, 40c to Topeka and Manhattan, and 52c to Belleville, Kan. The rate on the M. P. Ry. from New Orleans to Fort Smith, Ark., was 28c; to Little Rock, intermediate, 30c. The M. O. & G. Ry., extending from Sherman, Tex., to Joplin, Mo., had rates of 40c, 37½c, 41c and 32c to Red River, Miami, Baxter and Joplin, respectively. The G. C. & S. F. Ry. carried rates of 40c to Oklahoma points and 44c to intermediate Texas points. Traffic over the C. G. W. R. R. from Omaha eastward, moved against the grade of the rates, rates of 30c and 23c to St. Paul and Chicago were exceeded by the rate of 32c to Iowa points intermediate. HELD, (1) that petitioners should be permitted to continue lower rates from New Orleans than from other Louisiana points designated; (2) and lower rates to Fort Smith and Helena, Ark., Memphis, Tenn., Chicago and Cairo, Ill., St. Louis, Mo., and Milwaukee, Wis., than to intermediate destinations; (3) that the U. P. R. R. and C. R. I. & P. R. R. might continue lower rates to Omaha than to points intermediate; (4) the M. O. & G. Ry. might continue lower rates to Joplin, Mo., than to all intermediate points except Baxter; the A. T. & S. F. Ry. lower rates to Missouri and Illinois points than to intermediate points in Missouri, Kansas and Oklahoma; (5) lower rates to Oklahoma points than to Texas common points intermediate should be eliminated; (6) the C. G. W. R. R. might continue lower rates to St. Paul and Chicago than to Iowa points intermediate. Application No. 8835 asked authority to establish rates on sugar, C. L., minimum 60,000 lbs., from California, Utah, Nevada, Arizona and Idaho to points in Iowa, northern Missouri and Illinois, 23c higher than the rates from New Orleans. Such latter rates grading up from 23c at Chicago to 32c at the Missouri River, the effect would be to establish a rate of 46c to Chicago and 55c at the Missouri River and points west. The 11 western states and Hawaii produced over three times the sugar consumed by them, but the high rates to consuming territory prevented active competition with sugar entering the market from New York or the Gulf. Via the S. P.-U. P. and A. T. & S. F. systems there was a movement of empty cars eastward sufficient to handle all the additional sugar traffic which might possibly arise from granting the application. HELD, that substantially the rate proposed from San Francisco to Chicago is necessitated by the actual competition found at that point if the western carriers are to bring any sugar to Chicago. Rates to Chicago 25c higher than New Orleans, rates to that point authorized; and rates to points intermediate Chicago and the Missouri River, 23c higher than New Orleans rates to such points authorized. Fourth Section Violations in Rates on Sugar, 31 I. C. C. 511, 527.

(l) Lines forming rou .s from Galveston are at a substantial disadvantage in respect to the movement of banana traffic and are entitled to some measure of relief from the long-and-short haul provision of the fourth section. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 628.

(m) Carriers allowed to continue higher rates to intermediate points than to more distant points where their lines are not less than 15 per cent longer than the short line between the same points. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 633.

(n) Application for authority to maintain a joint through rate on glass bottles from Chattanooga, . Tenn. to Pulaski, Tenn., via an interstate route, higher than combination of intermediates based on Nashville, Tenn., denied. Chattanooga Bottle & Glass Mfg. Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-575.

(o) Violations of long and short haul rule found to exist, but cannot be acted upon until applications to continue such rates are passed upon. Murphey Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-631.

(p) Direct routes from New Orleans to Ohio River crossings and St. Louis, Mo., allowed to charge higher rates to intermediate points. Local rate to any interior point south of rivers must not be exceeded by any intermediate. Rates on Sugar, 31 I. C. C. 495, 502, 510.

(q) Indirect routes allowed to maintain higher rates from New Orleans to points intermediate to river crossings, or interior points south of rivers. Rates on Sugar, 31 I. C. C. 495, 502, 510.

(r) Where higher rates to intermediate points result from a carrier reducing rates to a terminal point without filing an application for authority to establish such relation, such establishment is in violation of the fourth section. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 652.

(s) The express or implied statutory recognition of the authority on the part of carriers to primarily determine for themselves the existence of substantially similar circumstances and conditions as a basis of charging a higher rate for a shorter than for a longer distance within the purview of the 4th section of the act to regulate commerce, and the right to make a rate accordingly, to continue in force until, on complaint, it was corrected in the manner pointed out by statute, ceased to exist after the adoption of the amendment to §4. This results from the fact that by the amendment in question, the original power to determine the existence of the conditions justifying the greater charge for a shorter than was exacted from a longer distance was taken from the carriers and primarily vested in the Interstate Commerce Commission, and for the purpose of making the prohibitions efficacious it was enacted that after a time fixed no existing rate of the character provided for should continue in force unless the application to sanction it had been made and granted. U. S. v. L. & N. R. R. Co., 35 Sup. Ct. Rep. 113, 115, 235 U. S. 314, 236 U. S. 318, 59 L. ed.

(t) The relief afforded from the fourth section should be sufficient in each instance to permit the carriers to continue to compete for the terminal traffic so long as it may be secured at rates that are sufficient to yield a revenue in excess of operating cost. The maximum of public benefit from the fourth section will result from the enforcement of conditions that will tend to preserve and promote and not to diminish or retard competition. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 629.

(u) Intent of fourth section and enforcement thereof is to reduce discrimination. Commodity Rates to Pacific Coast Terminals, 32 I. C. C., 611, 619.

(v) That provision of the fourth section which permits carriers by application to seek relief from its requirements presupposes a condition that will lead the carriers to seek such relief. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 613.

(w) Railroads should be permitted to make such rates as will hold to their lines some portion of the coast-to-coast traffic if able to do so with profit to themselves. Commodity Rates to Pacific Coast Terminals, 32, I. C. C., 611, 621, 622, 629.

(x) That provision of the fourth section which permits carriers by application to seek relief from its requirements presupposes a condition that will lead the carriers to seek such relief. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 618.

(y) When to the low coast rate is added a local in some cases equal to 50 per cent or more of the terminal rate it

does not necessarily follow that the result is a proper rate. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 631.

(z) Application for relief from fourth section in rates on apples from Overton and Blackwater, Mo., to Clinton, Ada and Hobart, Okla., stored in transit at Kansas City, denied. Walker v. M. P. Ry. Co., Unrep. Op. A-777.

(aa) Application for relief from fourth section with respect to rates on linseed oil cake from Minneapolis, Minn., to New Orleans, and from Red Wing and intermediate points denied. Reparation awarded. Red Wing Linseed Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-778.

(bb) No increase will be permitted in fourth section discriminations which may now exist in connection with rates to California terminals. Westbound Transcontinental Rates on Buckwheat and Corn Flour, Unrep. Op. A-841.

(cc) Authority to continue rates on oranges from Umatilla, Fla., to Charleston, W. Va., via Cincinnati, Ohio, lower than rates concurrently in effect to Huntington and other intermediate stations, denied. Markley & Co. v. A. C. L. R. R. Co., Unrep. Op. A-845.

(dd) Maintenance of lower rate on moulding sand from Richmond, Va., to High Point, N. C., than contemporaneously in effect to Greensboro, N. C., an intermediate point, not justified, and relief from fourth section denied. Guilford Foundry Co. v. S. Ry. Co., Unrep. Op. A-873.

(ee) Authority to maintain lower rates on flour and feed from Marquette, Kans., to Coal Creek, Okla., than to Fort Smith, Ark., an intermediate point, denied. K. B. R. Milling Co. v. M. P. Ry. Co., Unrep. Op. A-874.

(ff) Upon complaint that through rate exceeded combination of intermediates, a factor of which is an intrastate fare. Held, that the situation does not come within the prohibitions of the amended fourth section. Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896.

(gg) Carrier increased the rate on soft coal from Peoria, Ill., to New Prague, Minn., from $1.40 to $1.50 per ton, leaving lower rate in effect to Minneapolis, Minn., a farther distant point. Application for relief from fourth section denied. Carrier increased rate to Minneapolis. Reparation denied. New Prague Flouring Mill Co. v. M. & St. L. R. R. Co., Unrep. Op. A-902.

(hh) Authority to maintain lower rates on lumber from Rock, W. Va., to Harrisburg, Pa., than to Hagerstown, Md., and other intermediate points denied. Ellis & Meyers Lumber Co. v. V. Ry. Co., Unrep. Op. A-904.

(ii) Authority to maintain lower rate on apples from Front Royal, Va., to Vicksburg, Minn., than to Jackson, Miss., an intermediate point, granted. Wilson Produce Co. v. N. & W. Ry. Co., Unrep. Op. A-905.

(jj) Authority to maintain lower rate on apples from Front Royal, Va., to Vicksburg, Miss., than to Jackson, Miss., and intermediate point, granted. Wilson Produce Co. v. N. & W. Ry. Co., Unrep. Op. A-905.

(kk) Authority to maintain lower rate on yellow pine lumber from Hot Springs, Ark., to Alexandria, Va., than to Bristow, Va., an intermediate point, denied. Valley Planing Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906.

(ll) Application to charge lower rate from High Point, N. C., to Tacoma, Wash., than to Spokane, Wash., an intermediate point, denied. Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918.

(mm) Defendants are entitled to relief from long-and-short haul rule with respect to rates on lumber from Chattanooga, Tenn., and Huntsville, Ala., via Nashville, Tenn., on account of the circuitous route and because it appears that they have no control over the rate from Nashville or Chattanooga to Newark, N. J. Atha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919.

(nn) Complainants attacked the rates on cast iron pipe in carloads from East Radford and Lynchburg, Va., and Anniston, Ala., to Charlotte, N. C., and Rock Hill, S. C., as unreasonable and discriminatory. The rate from Lynchburg to Charlotte, 376 miles, was $3.60 per net ton from East Radford, 473 miles, $3.80. The rate from Anniston to Charlotte and Rock Hill was $4.40 per net ton. HELD, that the rates involved were unreasonable. **Fourth Section Issues:** Carriers sought authority to continue lower rates from East Radford and Lynchburg to Atlanta than to Charlotte, and lower rates from Anniston, Ala., to the Virginia cities than to Charlotte and Rock Hill. The

rate from East Radford to Atlanta was not applicable by way of Charlotte. Rates from Lynchburg to Greensboro, Lexington, and Charlotte, N. C., and Atlanta, Ga., were $3.40, $3.60, $3.60 and $3.25 for distances cf 114, 147, 207, and 475 miles. Rates from Anniston to Atlanta, Ga., Greenville, S. C., Charlotte, N. C., and Lynchburg, Va., were $1.60, $4.40, $4.40, and $3.50 for distances of 104, 265, 372, and 579 miles. Cast iron pipe from the Birmingham group could be laid down at Atlanta, at a rate of $2 per ton, while the rates from Northeastern points to the Virginia cities were less than $3.50. HELD (1) authority to continue higher rates on cast iron pipe from East Radford and Lynchburg, Va., to Atlanta, Ga., lower than to Charlotte, N. C., and points intermediate to Charlotte, denied; (2) C. Ry. and connections authorized to continue rates from Anniston, Ala., to Virginia cities Atlanta, and Augusta, Ga., lower than rates from Anniston to Rock Hill, S. C., and points on the S. Ry., between Rock Hill and Augusta, Ga.; (3) authority to continue rates from Anniston to Virginia cities lower than those to Augusta and points intermediate denied. Reparation denied. City of Charlotte, N. C. v. S. Ry., 34 I. C. C. 128.

(oo) In dealing with the through rates from points of origin to points of destination, relief from the provisions of the fourth section should be given only where evidence is clear that the lower rate to the more distant point is actually required by conditions at that point beyond the control of the petitioning carriers and that the rate required is actually subnormal. R. R. Comm'rs of Ia. v. A. T. & S. F. Ry., 34 I. C. C. 111, 113.

III. APPLICATION OF SECTION 4 TO RATES.

§4½. In General.

(a) Texarkana rates should be regarded as maximum rates to all points intermediate via the direct lines from St. Louis, Kansas City and Memphis. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 580.

(b) Complainant attacked the rate of $3.56 per ton for the transportation of phosphate rock from Mount Pleasant and Centerville, Tenn., to Shreveport, La., as unreasonable, discriminatory, and in violation of the fourth section. Tennessee phosphate rock is worth from $3.25 to $4 per ton. The rate from Nashville to Shreveport was $3.56, and from Mount Pleasant and Centerville to New Orleans, $2.17 per net ton. But the latter rate was established to meet the rail-and-water rate from interior Florida points via Tampa, of $2 per gross ton. The short-line distance, Mount Pleasant to Shreveport, is 588 miles, and the per ton-mile revenue 6.05 mills. But traffic ordinarily moves via Birmingham, Ala., 639 miles, or via Memphis, 642 miles, making the yield per ton-mile about 5.6 mills. From Centerville to Shreveport the short-line distance is 564 miles, and the revenue 6.3 mills per ton-mile. In comparison with the Mount Pleasant-Shreveport figures, the rate from Mount Pleasant to Augusta, Ga., was $2.80, yielding 5.49 mills per ton-mile for 510 miles; to Charleston, S. C., $2.68, yielding 4.19 mills per ton-mile for 639 miles; and to Gulfport, Miss., $2.20, yielding 4.22 mills for 521 miles. As compared with the Centerville-Shreveport figures, the rate from Centerville to Enterprise, Miss., was $3.70, yielding 7.3 mills per ton-mile for 50 miles, and to Jacksonville, Fla., $4.50, yielding 6.5 mills for 697 miles. In International Agricultural Corporation v. L. & N. R. R. Co., 22 I. C. C. 488, the Commission established a rate of $3.95 on sulphuric acid, a commodity which takes substantially the same rate as phosphate rock, from Copperhill, Tenn., to Wilmington, N. C., for a distance equivalent to that here involved. HELD, that the rate of $3.56 on phosphate rock from Mount Pleasant and Centerville, Tenn., to Shreveport, La., is not unreasonable nor prejudicial. Complaint dismissed. Meridian Fertilizer Factory v. L. & N. R. R. Co., 30 I. C. C. 494.

(c) Where the rate per 100 lbs. is less for the longer than for the included haul there is a violation of the fourth section, notwithstanding the fact that the minimum weight prescribed for the former rate exceeding that prescribed for the latter, the carload charge at the former minimum may exceed that at the latter; for cars shipped to the intermediate point may be loaded in excess of the minimum. Fourth Section Violations in Rates on Sugar, 31 I. C. C. 511, 523.

(d) The provision of section 4 that through rates shall exceed the sum of the intermediates, does not apply where the factors are intrastate rates. Corpora-

tion Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 533.

(e) The fundamental reason for granting relief to any line at a given point is the meeting at that point of the competition of other carriers, against which competition the petitioner is at a disadvantage. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 304.

§5. Intermediate Points.

(a) On rehearing granted on the decision of the Commission, 27 I. C. C. 54, prescribing a rate of 15c per 100 lbs., yielding a ton-mile revenue of 14.7 mills, minimum 20,000 lbs., on shipments of feeder and fat cattle from East St. Louis, Ill., to Owensboro, Ky., a distance of 204 miles, and a rate of $32 per carload on similar shipments from Chicago to Owensboro, a distance of 329 miles, defendants sought to establish the propriety of the former rates of $45 per carload (22 mills per ton-mile) from East St. Louis, and of 25c per 100 lbs., minimum 20,000 lbs., from Chicago. It appeared there were rates of 15c (11 mills per ton-mile) effective for the 271-mile haul from East St. Louis to Louisville, 15c plus $2 per car the 306 miles haul from Chicago to Louisville; $25 per car for the 162 miles haul from East St. Louis to Evansville, and 15c on the 287-mile haul from Chicago to Evansville. Owensboro lies three or four miles south of the Ohio River, unbridged at that point, on the L. H. & St. L. Ry., which parallels the stream, 42 miles east of Evansville. Cattle are shipped there from Kansas City and Chicago to be fattened on the refuse of the whisky distilleries and then reshipped, principally to Chicago. Owensboro is served by three carriers—the L. H. & St. L., the I. C. and the L. & N. R. Rs., the former furnishing the short line from East St. Louis, the gateway for cattle shipments from Kansas City, the distance via the L. H. & St. L. R. R., in connection with the L. & N. Ry., being 204 miles as compared with 364 and 354 miles in case of the L. & N. R. R. and the I. C. R. R., respectively. The L. H. & St. L. R. R. is located in a sparsely settled territory, where the density of traffic is light and population small; its financial condition was unsatisfactory, its operation showing a deficit in 1913, and since 1907 depreciation on equipment only has been charged to operating expenses. Active water competition on the Ohio River between Louisville and Evansville compelled it to divide a considerable portion of its traffic with the boat line, but there was no water competition with respect to cattle. The haul between points of origin and Ohio River crossings was in all cases a one-line haul, while to Owensboro it was a two-line haul. While Owensboro might properly be treated as a point 42 miles south of the river, the difference of 66 miles in its favor as compared with the short line from East St. Louis to Louisville was sufficient to compensate the L. H. & St. L. R. R. for whatever difference there might be between the accepted level of rates north and south of the river. At other Kentucky points situated at substantially the same distance from East St. Louis as Owensboro rates per car ranged from $38 to $46.75, yielding per-car-mile earnings of from 18c to 22.7c; and from East St. Louis to Kentucky distillery points, located at substantially the same distance from an Ohio River crossing, the rate per car of 20,000 lbs. ranged from $45 to $47; from Chicago, $40 to $50. The cattle traffic involves expensive terminal facilities, heavy loss and damage claims, the free transportation of a caretaker, unloading for feeding and compliance with quarantine regulations. For many years prior to 1909 defendants maintained a 15c rate from East St. Louis to Owensboro. Conditions affecting the rate had not changed, and the terminal expense at Owensboro remained the same. The average per-ton-mile revenue on live stock for the United States is 7.5 mills, with the revenue on cattle 60 per cent higher. For Illinois, Indiana and Kentucky the average of all freight is 6.5 mills; for cattle, 10.4 mills. Thus the proposed rate of $45 per car, yielding 22 mills per ton-mile, would yield a revenue 135 per cent greater than that from all kinds of freight in that group of states. The commodity rate of $32 on shipments from Chicago to Owensboro was in excess of a former fifth-class rate of 18c per 100 lbs. HELD, that the proposed rate of $45 per car from East St. Louis to Owensboro would involve a violation of the fourth section, when compared with the rate of 15c per 100 lbs. from East St. Louis to Louisville, Owensboro being an intermediate point; and that therefore no

change would be made regarding the rate from East St. Louis. It not appearing that any new conditions had arisen since the fifth-class rate of 18c was in effect between Chicago and Owensboro, ordered that the rate be fixed at 18c, with a minimum carload weight of 20,000 lbs., plus $2 per car bridge toll. Rock Springs Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18.

(b) Complainants protested against the rate of 90c per 100 lbs., minimum weight 36,000 lbs., yielding a ton-mile revenue of 3c on shipments of sugar in carloads from Los Angeles and Los Alamitos, Cal., to Benson, Ariz., distances of 551 and 587 miles, respectively, as unreasonable and in violation of section 4, the rate to El Paso, distant 811 miles from Los Angeles and 847 from Los Alamitos, being but 60c, yielding a ton-mile revenue of but 1.42c to 1.48c, while the average receipts of the company on all freight were but 1.23c per ton-mile. The rate to El Paso was fixed to compete with rates of 57½c to 63c from New York to El Paso, involving a rail haul of 886 miles and water haul of over 2,000 miles, 55c from New Orleans, distant 1,191 miles, and 49c from Colorado points at an average distance of 726 miles. Rates from California to Minnesota and South Dakota were from 60c to 75c, over average distances of 2,000 miles; and to Utah, distant 1,200 miles, 60c. HELD, that the rate to El Paso was not unreasonably low, but that a rate to Benson in excess of 60c was unreasonable. Defendant denied fourth section application on traffic to El Paso. Reparation denied. Maier & Co. v. Southern Pacific Co., 29 I. C. C. 103.

(c) Complainants protested against the export rate of 14c per 100 lbs. on hardwood lumber shipped from Mangham, Baskin and Winnsboro, La., to New Orleans, an average distance of 257 miles, as discriminatory and in violation of the fourth section, compared with a rate of 10c from Rayville, La. All four points were situated on defendant's line, Rayville being the most remote from New Orleans. Rayville lay at the junction of defendant's road with another line which hauled lumber therefrom over a circuitous route of 300 miles or more at a 10c rate, and defendant had reduced the rate from Rayville to meet the rate of the other line. It was shown that the 14c rate was a group rate applicable to many points in northeastern Louisiana, distant from New Orleans as much as 305 miles. HELD, that the 14c rate complained of was not unreasonable, but that defendants had not justified the maintenance of the 10c rate from Rayville. Application for authority to continue the latter rate as against a higher rate from intermediate points denied. There being no definite proof as to the damage sustained, reparation denied. Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120.

(d) Complainant attacked the fifth-class rate of 14.5c per 100 lbs. on a carload of iron pipe fittings from Martinsville, Ill., to Whiting, Ind., within the switching limits of Chicago, as unreasonable and in violation of section 4, in that defendant likewise published a rate of 9c from East St. Louis to Whiting, to which points Martinsville was intermediate. The distance from East St. Louis to Whiting via the C. & A. Ry., the short line, is 297 miles, while the long-line distance, through Martinsburg is 392 miles. Martinsville is a junction on the Vandalia line, 137 miles from East St. Louis and 255 miles from Whiting. The rate via the short line, for a haul of 297 miles, was 9c, which defendants met for the haul of 392 miles via their lines, but at the same time charged 14.5c for the haul of 255 miles from Martinsville, 137 miles from East St. Louis. Martinsville is 42 miles nearer Whiting by defendant's lines than is East St. Louis, via the C. & A. Ry. HELD, that the evidence did not justify the rate of 14.5c from Martinsville to Whiting in the face of the 9c rate from East St. Louis to Whiting. Fourth section application denied. No showing that the former rate was unreasonable per se having been made, complaint dismissed. Standard Oil Co. v. Pennsylvania Co., 29 I. C. C. 524.

(e) While zone rates established may involve moving traffic from a lower through a higher group in apparent disregard of section 4, same thing happens in Central Freight Association territory, with no inequitable results. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 201.

(f) If carriers publish for interstate

use state rates which are lower than through charge, section 4 must be observed, unless permission to the contrary is granted upon application to this Commission. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 563, 568.

(g) Rates via circuitous routes made to meet short-line road to long-distance point may not bear a reasonable relationship to intermediate points. Alton Board of Trade v. C. & A. R. R. Co., 28 I. C. C. 589, 593.

(h) Rates on walnut stumps from Algood, Tenn., to Baltimore, Md., as compared with lower rates from Nashville, Tenn., to which point Algood is intermediate, not found unreasonable, and complaint dismissed. Williamson Veneer Co. v. T. C. R. R. Co., Unrep. Op. A-108.

(i) Higher rate in effect from Higginsville, Mo., to Memphis, Tenn., on apples than from Kansas City, Mo. Higginsville is intermediate to Kansas City. HELD, in violation of section 4. Reparation awarded. Clemons Produce Co. v. C. & A. R. R. Co., Unrep. Op. A-324.

(j) Higher rate in effect from Higginsville, Mo., to Memphis, Tenn., than from Kansas City, Mo. Higginsville is intermediate to Kansas City. HELD, in violation of section 4. Reparation awarded. Clemons Produce Co. v. C. & A. R. R. Co., Unrep. Op. A-324.

(k) Merely because there was a lower rate on wagon material "in the white" from Sequatchie than the lumber rate from Kimball, an intermediate point, does not sustain allegation that the fourth section was violated. Thronhill Wagon Co. v. N. & W. Ry. Co., Unrep. Op. A-383.

(l) Higher rate in effect on smithing coal from the East to Denver, Colo., than to Salt Lake City, Utah, found to be in violation of section 4. Reparation awarded. Moore Hardware & Iron Co. v. D. & R. G. R. R. Co., Unrep. Op. A-392.

(m) Cancellation of commodity rate, leaving higher class rate in effect on oleo stock from Los Angeles, Cal., to Chicago, Ill., following action in so-called Intermountain cases, and for the purpose of eliminating violations of section 4, not found to have been justified. Sulzerberger & Sons Co. v. S. P. Co., Unrep. Op. A-400.

(n) The fact that a given route between two points is appreciably longer than the short-line distance, will justify the maintenance of slightly lower rates to a terminus than to intermediate points on the route. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 317.

(o) The competition between a city and other distributing centers does not constitute a justification for making lower rates thereto than to intermediate points. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 317.

(p) Intermediate points are in many instances of such relatively small importance as to make it unnecessary to make a large number of commodity rates to them. The establishment of such rates and their continuance through subsequent tariff issues would make these tariffs unnecessarily cumbersome, and serve no useful purpose. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 335.

(q) The maintenance of a lower rate from a farther distant point does not of necessity subject the intermediate point taking a higher rate to an unjust discrimination. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 29 I. C. C. 28, 29.

(r) Piqua, O., given the same rates on logs from Eleanor and Surrey, Ill., as from Keithsburg, Ill., and Ft. Madison, Ia., farther distant points. Hartzell v. C. H. & D. Ry. Co., Unrep. Op. A415.

(s) Lower rates from Isanti and Braham, Minn., to Batesville, Ark., than to intermediate points, not justified. Mahaffey Co. v. G. N. Ry. Co., Unrep Op. A433.

(t) Lower rate on lumber from Lumberton, Miss., to Valley Park, Mo., than to Webster Groves, Mo., an intermediate point, not justified. Wells Lumber Co. v. G. & S. I. R. R. Co., Unrep. Op. A434.

(u) A point directly intermediate to the base point, upon which the lowest combination makes a rate no higher than such combination, must be maintained, and it is not necessary in such cases to haul the shipment to the base point and back again to destination. Tusten Seed and Produce Co. v. V. S. & P. Ry. Co., Unrep. Op. A442.

(v) Rates from Kansas to Gallup, N. M., found unreasonable inasmuch as they exceed the rates to Flagstaff, Ariz., a more distant point. Western Stores Co. v. W. F. & Co., Unrep. Op. A530.

(w) The rate of 17c concurrently in effect from Memphis, Tenn., and Madison, Ark., to Leavenworth, Kan., has been justified. Helmers Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A542.

(x) By three complaints it was alleged that the rates on hard and soft coal from various points of origin to Beatrice, Neb. were unduly prejudicial compared with rates to Lincoln, Neb., and in violation of the long-and-short-haul clause. **Hard Coal.**—Complainant attacked the rates on hard coal from Milwaukee, Wis., and Chicago and East St. Louis, Ill., to Beatrice, as discriminatory and higher than the rates to Lincoln, though via some routes the coal was hauled through Beatrice. Rates from the three points to Lincoln were $2.65, $2.65 and $2.20, and to Beatrice $3.15, $3.15 and $2.70, being differentials of 15c to Lincoln and 65c to Beatrice above the Chicago-Omaha rate of $2.50. While rates to Beatrice are higher than rates to Lincoln, it had a lower basis of rates than is in effect to the greater part of the state. The rate per ton from Chicago to Beatrice via the C. B. & Q., C. R. I. & P., or the C. & N. W. and U. P. was $3.15, yielding 5.38, 4.89 and 5 mills per ton-mile, respectively, for distances of 585, 644 and 623 miles. Branch line and disconnected service was required by every line which served Beatrice, while Lincoln was on the main lines of the C. B. & Q. and the C. R. I. & P. Rys. The rate from East St. Louis via the C. & A. and U. P R. Rs. to Lincoln was $2.20, yielding 5.15 mills for 530 miles, and the rate to Beatrice $2.70, yielding 5.51 mills for 490 miles. From Wilkes-Barre, Pa., as a typical point of origin, the combinations on Chicago was to Lincoln $5.78, to Beatrice $6.28, and the combinations on East St. Louis were to Lincoln $5.77 and to Beatrice $6.27. HELD, that the differing conditions justified somewhat higher ton-mile earnings on shipments of coal to Beatrice than those to Lincoln and that the rates on hard coal from Chicago, Milwaukee and East St. Louis to Beatrice were not shown to be unduly prejudicial. **Bituminous Coal from Illinois.**—Complainant attacked the rates on bituminous coal from Chicago, Peoria, and the southern Illinois coal fields via East St. Louis, Ill., to Beatrice, Neb., as discriminatory compared with rates to Lincoln, Neb. Lincoln pays a differential of 15c per ton over Omaha, while Beatrice, though the distances are in some cases less than to Lincoln, pays 50c over Lincoln. Thus from Herrin, Ill., to Lincoln the rate is $2.55, yielding 4.36 mills per ton-mile for 584 miles; and to Beatrice $3.05, yielding 5.24 mills per mile for 581 miles. The rates to Lincoln are the result of competitive conditions not existing at Beatrice. HELD, that the rates in question do not subject Beatrice to undue prejudice or give Lincoln and its residents an undue preference. **Coal from Iowa, Kansas, Missouri and Arkansas.**—Complainant assailed the rates from coal fields in Iowa, Northern Missouri, Southwestern Missouri, Southeastern Kansas and Northwestern Arkansas to Beatrice as unjustly preferential to Lincoln. The coal used for steam purposes comes mostly from the Kansas-Missouri fields, but articles manufactured at Beatrice do not compete with those manufactured at Lincoln. The Iowa rates were extremely low and those from the Kansas-Missouri field are made with reference to them. Rates to Lincoln from the Rich Hill district in Missouri and Kansas were $1.45 per ton on lump and $1.21 on nut, pea and slack coal, for 288 miles; to Beatrice $1.55 and $1.31, respectively, for 273 miles. Rates from the Pittsburgh district, immediately south, were made differentials higher, while those from Southwestern Missouri and Northwestern Arkansas to Beatrice were from 10c to 15c higher than the rate to Lincoln. HELD, that the rates from Iowa, Missouri, Kansas and Arkansas fields to Beatrice did not create unjust discriminations against Beatrice nor were they otherwise in violation of law. Complaint dismissed. **Fourth Section Applications.**—HELD, that the fourth section applications, so far as they related to rates on coal from the various points of origin to Lincoln, that were lower than the rates from the same points to Beatrice, be granted. Beatrice Commercial Club v. C. B. & Q. R. R. Co., 31 I. C. C. 173.

(y) Complainant attacked the rate of 60c on pine box shooks from Leavenworth, Wash., to Paonia, Hotchkiss and Austin, Colo., as unreasonable and discriminatory. Leavenworth is on the G. N. Ry., midway between Spokane and Seattle, and yet rates from both points

to the destinations in question were but 45c. The rate from Leavenworth was constructed by adding the 15c local to Spokane. Rates from Leavenworth to Salt Lake City, Colorado common points, and points east were made on the basis of a 1-cent differential over Spokane; while rates to points on the D. & R. G. R. R. between Salt Lake City and Colorado common points were made on the basis of full combination of local rates. HELD, that the rate attacked was unreasonable to the extent that it exceeded 46c; which rate was prescribed for the future. Reparation awarded. Lam-Davis Lumber Co. v. G. N. Ry. Co., 31 I. C. C. 341.

(z) So long as lower rates are maintained to more distant points on or via same line the rates to intermediate points should not exceed the average rates over one-line hauls for like distances. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 253.

(aa) Combination rate on corn from Adamsville and Geuda Springs, Kan., to Wann, Okla., found unreasonable in so far as it exceeded the joint rate in effect to Kansas City, Mo., a more distant point. Reparation awarded. Daves & Daves Grain Co. v. M. V. R. R. Co.. Unrep. Op. A-569.

(bb) Rate on nitrate of soda from Long Dock, N. J., to Corning, N. Y., found unreasonable to the extent that it exceeded rate to Buffalo, N. Y., and Bradford, Pa., more distant points. Reparation awarded and reduction ordered. Corning Glass Works v. E. R. R. Co., Unrep. Op. A-571.

(cc) Rate on logs from Aubrey, Ark., to Memphis, Tenn., found unreasonable as compared with the rate from Lean Junction, Ark., a farther distant point. Reparation awarded and reduction ordered. Nickey & Sons Co., Inc., v. M. & N. A. R. R. Co., Unrep. Op. A-600.

(dd) The Commission has held that where the direct line observes the rule of the fourth section, a competing line whose mileage exceeds that of the direct line by not less than 15 per cent should be permitted to meet the rate without reducing its charges to intermediate points, provided the rates to these points are reasonable. Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-601.

(ee) Application for authority to maintain lower rates on fir lumber from Minnesota Transfer, Minn., to Grand Rapids, Mich., than to Kalamazoo, Mich., and points intermediate thereto, granted. Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-601.

(ff) Rate on soft coal from Farmington, Ill., to Faribault, Minn., which exceeded the rate to Minneapolis, a farther distant point, not found unreasonable. Sheffield-King Milling Co. v. Iowa Central Ry. Co., Unrep. Op. A-630.

(gg) Carriers in the southeast affected by the Fourth Section Order 3866, 30 I. C. C. 153, asked for a modification of that order, to enable them to establish a harmonious, consistent and properly-related adjustment, in view of other orders of the Commission. They asked for such a modification of the order as would preserve certain established and long standing group relations. They also asked for such modifications in the order in Board of Trade of Carrollton, Ga. v. C. of G. Ry. Co., 28 I. C. C. 154, as would permit a proper relation between the rates to Carrollton and the proposed rates to other points in the same vicinity. HELD, in the scale of rates on page 174 of the original report, 30 I. C. C. 153, some rates were less for a two-line haul than for a one-line haul of equal length. These discrepancies are corrected by the substitution of a new scale for distances 300 miles to 750 miles, in which the rates for hauls of two or more lines are made higher than for a one-line haul. Carriers authorized in using mileage scale on ocean-and-rail business from New York and Philadelphia to add to the rates for like distances shown in the scale the differentials by which the rates on the classes from New York and Philadelphia to points in this territory usually exceeded the rates on the corresponding classes from Baltimore. In determining which routes are circuitous the gates Chattanooga, Birmingham, Montgomery and Atlanta are used on routes from Ohio and Mississippi River crossings; Charleston, Savannah, Brunswick and Jacksonville on ocean-and-rail routes from eastern cities: Chattanooga, Atlanta, Athens, Augusta and Savannah on rail routes from Virginia cities, distances to be computed from such gateways. Carriers authorized to depart from the requirements of the report and order as to rates from Ohio River crossings and New Orleans to Helena, Ga., and points in same general territory. Carriers authorized to continue lower rates from Louis-

ville and lower Ohio River crossings to Opelika, Ala., and points in Montgomery sub-territory than to intermediate points south of Atlanta in Atlanta sub-territory, and to continue lower rates from Cincinnati O., to points in Atlanta territory between Eufaula and Macon and between the Chattahoochee River and Cordele than to intermediate points in Montgomery sub-territory between Montgomery and the Chattahoochee River. Fourth Section Violations in the Southeast, 32 I. C. C. 61.

(hh) Rates to a point based on combinations higher than the rates in effect to more distant points on the same line, are in contravention of the fourth section. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 595.

(ii) To determine whether the fourth section is violated it is not necessary to pass on the disputed question whether any or all classes under the western classification are assimilable to classes under the southern classification. In case it were shown that a through tariff carried on specified articles from a point in western to another in southern classification territory rates in excess of the sum of rates carried by tariffs from point of origin to intermediate point and proportional rates applicable from the intermediate point to destination, a violation of the fourth section would be shown. The proof of such violation, however, would require demonstration that the specific article involved is governed by substantially the same tariff provisions under the through tariff as under the tariffs carrying the intermediate rates applicable thereto; and in the absence of such proof of identity in tariff description, etc., it can not be affirmed with certainty that a violation of the fourth section has been shown. Class Rates between Stations in Louisiana, 33 I. C. C. 302, 305.

(jj) Removing fourth section violations, as to which relief has been denied, by increasing the terminal rate rather than by reducing the intermediate rates are not regarded as prima facie improper. Daly Coal Co. v. C. & A. R. R. Co. I. C. C., 467, 469.

(kk) Complainants attacked the rates on bituminous coal from mines in Indiana and Illinois to Minneapolis and St. Paul, Minn. The rate of $1.50 per ton from the northern Illinois group of coal fields, or base rate group, had been established by the carriers to remove fourth section violations caused by their having prior thereto established a rate of $1.50 to intermediate points in southeastern Minnesota and Northeastern Iowa. The increase of $1.50 had not at that time been extended to St. Paul and Minneapolis, because of lower rates on coal via Duluth and the great lakes. The latter rates were raised, whereupon carriers established the rate complained of. From Streator, Ill., to St. Paul, 549 miles, the ton-mile earnings were 2.55 mills under the prior rate of $1.40, 2.73 mills under the existing rate of $1.50; while from Herrin to St. Paul, 549 miles, the respective ton-mile earnings were 3.24, and 3.39 mills. HELD that the rates from the Indiana and Illinois mines to St. Paul and Minneapolis had been justified. Complaint dismissed. Daly Coal Co. v. C. & A. R. R., 33 I. C. C. 467.

(ll) The fact that a carrier, being estopped by the order of a state commission from increasing the rates to certain terminal points, the denial of its application for relief from the fourth section would leave it no alternative but to reduce rates to intermediate points to the terminal basis with consequent loss of revenue which it is no position to sustain, is not of controlling force. Rates on Grain and Grain Products, 33 I. C. C. 613, 620.

(mm) To justify a reduction in rates which would naturally be reflected in the rates to intermediate points, the evidence should be clear and convincing. White v. Western Union Teleg. Co., 33 I. C. C. 500, 501.

(nn) The Commission considered proposed rates on grain products from Omaha, Nebr, St. Louis, Mo., and Ohio river crossings to Jackson and Meridian, Miss., on basis of combination on Vicksburg, Miss., lower than rates on like traffic to intermediate points; and also an application for authority to maintain lower rates from Vicksburg to Jackson and Meridian than to intermediate points. The existing rates on coarse grain products from Omaha to Jackson and Grand Junction, Tenn., and Holly Springs and Jackson, Miss., were 27, 26, 26, and 22.5c; existing rates from St. Louis, 19, 20, and 14.5c; and proposed rates from Omaha, 27, 26, 26, and 22.5c. The rate on coarse grain products from St. Louis to Vicksburg was 12c; from Vicksburg to Jackson, 44 miles east,

3 1-2c. The rates from St. Louis to Fulton, Ky., Hickory Valley, Tenn., Birmingham, Ala., and Hudsonville, Miss., were 16, 20, 24 and 20c respectively, for distances of 201, 305, 475, and 330 miles; as compared with the proposed rate of 15 1-2c to Jackson, Miss., for 524 miles. Lower rates from Vicksburg to Jackson and Meredian than to points intermediate resulted in lower rates from St. Louis to Jackson and Meredian than to points in close proximity to Vicksburg. HELD, (1) that carriers were authorized to continue rates on grain and grain products from Omaha, St. Louis, and Ohio River crossings to Jackson and Meridian, Miss., on basis of combination on Vicksburg, lower than rates to intermediate points; but (2) authority to continue rates from Vicksburg to Jackson and Meridian, that resulted in higher charges from those points of origin to intermediate points than to Jackson and Meridian, denied. Rates on Grain and Grain Products, 33 I. C. C. 613-2.

(oo) In making readjustments same rule or principle should govern as to circuitous versus short lines as apply in like cases to named routes. Fourth Section Violations in the Southeast, 32 I. C. C. 61, 67.

(pp) Operation of 15 per cent rule to distances of considerable length works a hardship on destination lines in certain instances. Fourth Section Violations in the Southeast, 32 I. C. C. 61, 67.

(qq) Carriers operating routes circuitous to extent of 15 per cent or more from principal gateways to competitive points permitted to meet rates established by short line competitors. Original report modified. Fourth Section Violations in the Southeast, 32 I. C. C. 61, 68, 69.

(rr) A lower rate to the terminal being fixed of necessity, rates to intermediate points which are higher do not necessarily unjustly discriminate against these points. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625.

(ss) Carriers sought authority to make commodity rates from eastern defined territory to the Pacific Coast lower than to intermediate points. Points of origin were as defined in 21 I. C. C. 329, 400, as modified July 10, and Sept. 28, 1914. Rates by rail and by water on certain representative articles, and tonnage for 1913 from transcontinental territories A and B were as follows:

Commodity	Quoted Sea Rate Prior to Opening of Canal L.C.L.	C.L.	Quoted by Sea Routes Sept. 5, 1914 L.C.L.	C.L.	Present Rail Rate L.C.L.	C.L.	Proposed Rail Rate L.C.L.	C.L.	Tonnage from Territories A and B During Year 1913 Sea	Rail
Canned Goods ...	85	55– 60	.....	50	.....	85– 95	...	75	10,713	4,921
Earthern & Stoneware	100	100	100	100	150	95	150	.....	737	5,201
Hardware & Tools ...	100	100	100	100	160–190	125	150	.....	14,888	5,635
Iron & Steel Articles.	75– 85	45– 60	75– 85	30– 60	.....	80	...	155–80	120,069	187,666
Paper Articles of ..	80–100	55– 75	80–100	50– 60	175–190	120–130	135	90	19,257	20,129
Wire Fencing..	85– 90	50– 65	.... .	30– 40	175	90	125	75	5,802	20,638

Since the opening of the Panama Canal water carriers had materially reduced their rates, shortened the time of transportation, increased the frequency of sailings, added to their tonnage capacity, and greatly added to the tonnage secured of coast-to-coast freight. Some 49 ships, tonnage capacity over 380,000 tons, were engaged in the service. In 1913 they moved 434,115 tons; in the first full month after the opening of the canal, 77,915 tons. The water carriers were reaching out to new territory and moving commodities theretofore moved almost exclusively by rail. The lowest proposed rate from Atlantic seaboard territory was 65c on pipe iron, yielding 8.1c per car-mile and 4.05 mills per ton-mile for 3,200 miles, while the average ton-mile revenue of the carriers was about 9 mills. The 65c rate from Missouri River territory to the Pacific Coast would yield 14c per car-mile and 7 mills per ton-mile, for a haul of 1,850 miles. The lowest rate proposed from the same territory, 42c on coal, would yield 13.6c per car-mile and 4.5 mills per ton-mile. For many commodities a 55c rate, minimum 80,000 lbs., was proposed, which would yield 23.7c per car-mile and 5.9 mills per ton-mile

for a haul of 1,850 miles. In 1913, the average receipts of the N. P. Ry., G. N. Ry., C. M. & St. P. Ry., S. P. Co. and A. T. & S. F. Ry. were 16.560, 17.617, 13.304, 21.089, and 16.015c per car-mile and 8.39, 7.65, 7.93, 11.85 and 10.30 mills per ton-mile; showing a ton-mile average of about 9 mills. The average load varied from 16 to 23 tons. HELD, that no relief should be granted as to rates from the Missouri River to the Pacific Coast, which were 75c or more per 100 lbs. Upon listed commodities, other than coal and pig iron, which moved to the terminals on rates less than 75c rates should be graded with distance, reaching a maximum near the point where the terminal rate added to the local or proprotionate rate back meets the rate of 75c. Relief from the long-and-short haul rule granted as to certain commodities, if the terminal rate were increased to 75c, the same to be applied as a maximum. **Carload Commodity Rates from Points in Zones 2, 3 and 4.** Chicago, Buffalo and Pittsburgh, and New York, were on the eastern borders of these respective districts. Class rates from Chicago to western Nevada exceeded those from the Missouri River by 40, 34, 26, 17, 14, 17, 14, 11, 10, and 9c; those from Buffalo and Pittsburgh exceeded them by 70, 59, 46, 29, 24, 29, 24, 20, 17 and 15c, and those from New York exceeded them by 100, 84, 66, 42, 34, 42, 34, 28, 34 and 22c. The commodity rates proposed were mostly of articles rated fifth and fourth class under western classification and were materially lower than the corresponding class rates. A differential of 15c from Chicago over the Missouri River would yield 6 mills per ton-mile for the additional haul of 500 miles; 25c Pittsburgh over Missouri River would yield 5 mills per 1000 miles; 35c, New York over the Missouri River would yield 4.66 mills for 1,500 miles. Existing rates on canned goods to terminals from Missouri River, Chicago, Pittsburgh and New York, were 85c to 90c; existing rates to Reno from the same points were 114, 133, 148 and 153c; proposed rates to Reno, 75, 90, 100 and 110c; and rates to Reno from rising existing rates to terminals, and applying thereto percentages used in Fourth Section Order No. 124, were 85-90, 90-96, 98-103½, and 106-112.5c. HELD, that carriers might establish carload commodity rates from points in zones 2, 3 and 4 to Pacific Coast terminals lower than to intermediate points, provided the rates on like traffic to intermediate points are not exceeded by more than 15, 25 and 35c from points in zones 2, 3 and 4, respectively. **Less-Than-Carload Commodity Rates.** About 50 items on the list proposed less-than-carload rates from all eastern defined territories to the Pacific Coast, varying from $1.75 to $1.00 per 100 lbs. Existing rail rates on nails and spikes, paint and wire fencing, were $1.30, $1.30, and $1.75; proposed rail rates, $1.00, $1.15 and $1.25; water rates, 30, 50 and 40c. From the Missouri River to the Pacific Coast the existing rail rates on these commodities were from 55 to 80 per cent of the class rates on the same. Class rates on the first four classes from the Missouri River to western Nevada and Arizona were $2.50, $2.17, $1.85 and $1.58, respectively. HELD, that carriers might establish less-than-carload commodity rates from Missouri River to Pacific Coast terminals lower than to intermediate points, provided rates to intermediate points did not exceed $1.50 on articles classed as first and second class, and $1.25 on articles otherwise classified under western classification. **Less-Than-Carload Rates from Chicago, Pittsburgh and New York.** The rates on the first four classes from Missouri River to western Nevada were exceeded by the rates from Chicago by 40, 34, 26 and 17c; by the rates from Pittsburgh by 70, 49, 46 and 29c; and by the rates from New York by $1.00, and 84, 66 and 42c. HELD, that the differentials by which these commodity rates from points in zones 2, 3 and 4 might exceed rates from the Missouri River should not exceed the latter by more than 25, 40 and 55 cents. **Commodity Rates to Points in Back-Haul Territory.** These points were affected by competition from the Coast terminal cities to a greater degree than were the intermountain points further east. SUGGESTION, made that carriers readjust rates to back-haul points by either adding to the full terminal rates something less than the full locals from terminals to destination, or by publishing basing rates to the terminals less than the terminal rates to be used in connection with local rates in determining rates to intermediate points. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 631.

(tt) L. c. l. commodity rate to an intermediate point should not exceed rate to next more distant point by more than the class rate to which this commodity belongs exceeds the corresponding class to the more distant point. Sugar Rates from New Orleans, 32 I. C. C. 606, 610.

(uu) Rates to a point based on combinations higher than the rates in effect to more distant points on the same line, are in contravention of the fourth section. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 595.

(vv) The fact that rates to terminals are unusually low does not justify maintenance of rates to intermediate points that are unreasonably high; but a lower rate to the terminal being fixed of necessity, rates to intermediate points, which are higher, do not necessarily unjustly discriminate against these points. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625.

(ww) Violation in long-and-short-haul rule was covered by fourth section application. Commodity rate of 12 cents from Milwaukee to Traverse City, Mich., canceled, and fifth class rate of 20 cents made applicable to beer. Found to be reasonable adjustment with rates from Chicago. Schoenhofen Brewing Co. v. P. M. R. R. Co., Unrep. Op. A-826.

(xx) Rates on flour and feed from Marquette, Kans., to Fort Smith, Ark., higher than to Coal Creek, Okla., a farther distant point, found unreasonable. Coal Creek rates have been increased to Fort Smith basis since filing of complaint. Reparation claim dismissed. K. B. R. Milling Co. v. M. P. Ry. Co., Unrep. Op. A-874.

(yy) Authority to maintain lower rates on lumber from Rock, W. Va., to Harrisburg, Pa., than to Hagerstown, Md., and other intermediate points, denied. Ellis & Meyers Lumber Co. v. V. Ry. Co., Unrep. Op. A-904.

(zz) Rate on yellow pine lumber from Hot Springs, Ark., to Bristow, Va., higher than rate to Alexandria, Va., a farther distant point, not justified. Valley Planing Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906.

(3a) Rate on yellow pine lumber from Hot Springs, Ark., to Bristow, Va., higher than rate to Alexandria, Va., a farther distant point, not justified. Valley Planing Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906.

(3b) Rates from New York, N. Y., to Atlanta, Ga. lower than rates from Greenville, S. C., an intermediate point, not found unreasonable or unduly prejudicial. Lipscomb-Russell Co. v. S. Ry. Co., Unrep. Op. A-911.

(3c) Maintenance of lower rates from New York, N. Y., to Atlanta, Ga., than to Greenville, S. C., an intermediate point, not found to be unreasonable or unduly prejudicial. Lipscomb-Russell Co. v. S. Ry. Co., Unrep. Op. A-911.

(3d) Rate on desks from High Point, N. C., to Spokane, Wash., higher than rate to Tacoma, Wash., a farther distant point, reduced after hearing to basis of Tacoma rate. Reparation denied. Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918.

(3e) Through rates on corn from points in Illinois north and east of East St. Louis, Ill., shipped through East St. Louis to Little Rock and other Arkansas points, lower than local rates to same destinations from points in Illinois intermediate to East St. Louis, found to be unreasonable. Nanson Commission Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-926.

(3f) Rate on dry glue from Milwaukee and Cuday, Wis., to Winston-Salem, N. C., lower than rate from Carrollville, Wis., an intermediate point, not found unreasonable. United States Glue Co. v. C. & N. W. Ry. Co., Unrep. Op. A-930.

(3g) Increased rate on lumber from Chattanooga, Tenn., to Nashville, Tenn., removing violations of long-and-short-haul rule, found to have been justified. Lumber Rates from Chattanooga, Tenn., to Nashville, Tenn., Unrep. Op. A-949.

(3h) Rate on wheat from Wilmore, Kans., to Tucson, Ariz., found unreasonable to the extent that it exceeded the rate to Los Angeles, Cal., a farther distant point. Reparation awarded. Millers Grain Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-958.

(3i) In 32 I. C. C., 611, the Commission suggested that carriers serving Pacific Coast terminals submit a plan for rates to back-haul territory something less than the full combination on the terminals. The lines leading to California terminals now proposed to deduct from terminal commodity rates 7c per 100 lbs., carload, and 10c l. c. l., for basing rates, adding thereto the full local from nearest terminal. The north coast lines proposed the following to groups shown in Transcontinental Freight Bureau Tariff-4-L: To group 2 points, the terminal rates plus not exceeding 5c carload, and not exceeding 10c l. c. l.; to group 3, rates 5

and 10c less than terminal rates plus lowest rate from any terminal; group 4, rates same as in group 3, except on certain carload commodities accorded a lower rate; group 5, same as group 4, but rates on said commodities to be 10c higher; territory east of group 5, rates limited by maxima prescribed by Commission, but on said commodities not more than 10c over rates to group 5. Carriers also asked authority to establish rates of 200, 173, 146 and 126c on the first four classes on less-than-carload shipments from Missouri River points to inter-mountain territory; and permission to continue existing rates to Salt Lake City, Utah. It was shown that Atlantic-Pacific steamships delivered freight at East San Pedro, Cal.; Astoria Oreg.; Vancouver, Bellingham, South Bellingham, Everett, Aberdeen, Hoquiam, and Cosmopolis, Wash. HELD (1) the plans for constructing rates to back-haul points were not approved; (2) Carriers were authorized to construct such rates by adding to terminal rates not more than 75 per cent of local rates from nearest terminal to destination, or by adding arbitraries to terminal rates, varying with distance from ports, of not exceeding 75 per cent of local rates, aggregate not to exceed maximum prescribed for intermediate points; (3) Carriers were authorized to extend terminal rates to the additional Pacific coast ports mentioned above; and (4) report and order of Jan. 29, 1915, was so modified as to permit maximum less-than-carload rates from the Missouri River to intermediate points on first and second class commodities of $1.72 per 100 lbs. When lower rates were applicable to coast terminals. Commodity rates to Pacific Coast Terminals, 34 I. C. C. 13.

(3j) Complainants attacked the rates on cedar shingles from points in Oregon, Washington, Idaho and Montana to points in Iowa, as unreasonable and discriminatory compared with rates from the same points to Chicago, Ill., and St. Louis, Mo. The rate from Seattle, Wash., to Chicago and St. Louis was 65c; to the Iowa points 67 and 68c. The rate to Chicago through Missouri River gateways was the same as through Duluth or the twin cities, and the same degree of discrimination against intermediate points existed. HELD (1) that carriers had not shown any necessity for maintaining lower rates to Chicago and St. Louis than to intermediate points, or that the rates to the former were any lower than a reasonable and fairly remun rative rate; (2) fourth section applications denied; (3) maintenance of rates to Iowa points not intermediate to Chicago or St. Louis higher than to the latter points held discriminatory. Railroad Comm'rs of Iowa v. A. T. & S. F. Ry., 34 I. C. C. 111.

(3k) Complainant attacked the rates of 19 and 19 1-2c per 100 lbs on grain and grain products from Trebein and Leesburg, Ohio to various intermediate points in West Virginia, Kentucky, and Virginia, as unreasonable and discriminatory compared with lower rates to Norfolk, Va. The rate from Trebein and Leesburg to Norfolk was 15.4 and 14.9c. The distances to destinations were 59 miles longer and the rate 1.6c higher from Trebein than from Columbus; the distance 34 miles longer and the rate 1.1c higher from Leesburg than from Chillicothe. HELD (1) that maintenance of lower rates on grain and grain products from Trebein and Leesburg to Norfolk than to intermediate points west of and including Bluefield, W. Va., were not justified. Relief from fourth section denied; (2) Rates to main-line points on the N. & W. Ry. west of and including Bluefield, were unreasonable to the extent they exceeded 15.4 and 14.9c per 100 lbs. Reparation denied; (3) Rates to branch-line points on the N. & W. Ry., both east and west of Bluefield not shown to be unreasonable. Dewey Bros. Co. v. P. C. C. & St. L. Ry., 34 I. C. C. 135.

§6. Intermediate Points Off Line.

(a) Higher rate in effect on cottonwood from Annona, Tex., to Springfield, Mo., a less distance than from Shreveport, La., to Kansas City, Mo., a greater distance. The points in question are not intermediate via the direct lines or usual routes of movement, and was established in order to meet competition. Complaint dismissed. Dood v. T. & P. Ry. Co., Unrep. Op. A-223.

IV. COMPETITION AS JUSTIFICATION.

See Competition.

§7. In General.

(a) Certain carriers filed applications for relief from the fourth section in order to establish reduced rates from Ohio River crossings, St. Louis and Memphis, to stations in North Carolina.

Existing rates from Cincinnati and Louisville to points in eastern North Carolina are made by using as proportionals from those points to Virginia cities the rates from Chicago to Cincinnati and Louisville, to which proportionals are added the rates from Virginia cities to eastern North Carolina points. Rates to points in western North Carolina are constructed by using as proportionals from Cincinnati and Louisville to Painted Rock 75 per cent of the rates from Cincinnati to Atlanta, adding the local from Painted Rock. Through rates from lower Ohio River crossings, St. Louis and Memphis, to Carolina territory are obtained by adding to the Cincinnati rates on classes one to six the following differentials: Ohio River, 10c, 10c, 8c, 8c, 6c and 4c; St. Louis, 33c, 29c, 22c, 15c, 13c and 10c; Memphis, 8c, 8c, 6c, 6c, 4c, 2c. It was proposed to reconstruct the rates from Louisville and Cincinnati by adding to the proportionals to the Virginia cities proportionals from the latter, approximately 20 per cent lower than the locals, effecting a reduction of through rates from Cincinnati on classes one to six of 11c, 8c, 8c, 6c, 6c and 4c. The rates from the lower Ohio River crossings, St. Louis and Memphis would be reduced by the same amount. The proposed rates would involve no discrimination as to intermediate points via direct lines, though there would be some as to points on indirect lines, and the rates would grade normally southward to the southern border of the state. No reductions are proposed to coast points, while as to interior points reductions apply to nearly 700 stations in North Carolina, the through rates to practically all points in the state being reduced approximately 10 per cent. The reductions would bring about some increases in discrimination against Knoxville, Morristown and other points, as compared with Cincinnati, in rates to territory lying east of Salisbury, but none as to territory lying west. Knoxville is directly intermediate, on the Asheville route, between Louisville and Cincinnati and Carolina points, and is on the short line to western and southern North Carolina; but the short line to northern and eastern portions of the state is via the Virginia cities. The Asheville line is through a mountainous and sparsely populated territory, clearly at a disadvantage in making rates to eastern North Carolina. On the rates from Memphis some increases in discrimination against points of origin would result if the applications were granted. HELD, that the proposed rates were not unjustly discriminatory. Ordered that the rates proposed for the Ohio River cities and St. Louis be established, as well as the Memphis proportionals on business coming from west of the Mississippi, provided the latter be so limited as to prevent discrimination against intermediate points of origin. Rates to North Carolina Points, 29 I. C. C. 550.

(b) Complainant attacked the class and commodity rates from St. Louis and Kansas City, Mo., Memphis, Tenn., and from points in Central Freight Ass'n and Western Trunk Line territories to Texarkana, Tex., and Texarkana, Ark., as unreasonable, discriminatory and in violation of section 4, compared with rates from the same points of origin to Shreveport, La., and asked that the carriers be required to observe the rates to Shreveport as the maximum rates to Texarkana. Texarkana, Tex. and Ark., are located on the boundary of Arkansas and Texas, and while under separate municipal governments, are physically one continuous city. Shreveport is on the Red River, 72 miles south of Texarkana by the direct route of the K. C. S. Ry., and both cities are jobbing centers. The short line to Shreveport runs through Texarkana, and via any route Shreveport is further distant from the territory involved than Texarkana. The tariffs in question published specific class rates from the three gateways, while from the remaining territory class rates were made by adding differentials to the rates from St. Louis or Kansas City, taken as basing rates. Rates based on St. Louis were not restricted to traffic via St. Louis, but applied as well to movement via Kansas City or Memphis. The rates from Kansas City were the same as those from St. Louis, while those from Memphis were lower. From the three gateways the last four classes of rates were the same to Texarkana as to Shreveport, while the rates on the first six classes ranged from 1c to 8c higher to Texarkana; and the rates from all other points from which traffic moved through the gateways were higher by the same amount. The short-line distance from St. Louis to Texarkana is 490 miles via the St. L. I. M. & S. Ry., with Shreveport 72 miles

beyond via the K. C. S. Ry. Owing to heavy grades in the Ozarks, traffic on the St. L. I. M. & S. Ry. short line has been limited to local freight, through freight being routed east of the Mississippi via Thebes, Ill., a distance of 526 miles. But over this route the short-line distance to Shreveport is 589 miles; in any event, the distance to Shreveport exceeding that to Texarkana by 63 miles. The short line from Kansas City to Shreveport is through Texarkana, the mileage via the direct line of the K. C. L. Ry. being 488 miles to Texarkana and 560 to Shreveport. The distance from Memphis to Texarkana is 293 miles via the St. L. I. M. & S. Ry. and to Shreveport 321 miles via the Cotton Belt Ry. The average distance from St. Louis, Kansas City and Memphis to the Shreveport group, embracing Shreveport, Alexandria and Monroe, are, respectively, 37, 148 and 28 miles greater than the distance to Texarkana. The Shreveport group is situated on the Red and Washita rivers, originally navigable at those points, and tariffs still named lower all-water rates from Atlantic seaboard territory via ocean and river lines than the water-and-rail rates via Gulf boat lines and rail carriers from New Orleans. But as a matter of fact but one boat has operated on the Red River since 1905, and that had discontinued service. Rates to Shreveport are much higher than they were at the time when rates to that point were affected by water competition. Rates to Shreveport from the Atlantic seaboard via South Atlantic and Gulf ports were below the rates from St. Louis to Shreveport. Rates from St. Louis to Dallas, a distance of 686 miles, and Texas common points, at an average distance of 800 miles, are 20c above Texarkana and 22c above Shreveport. Not only were the rates from the three gateways and defined territories higher than those to Shreveport, but the rates from such points to a large number of other intermediate points were higher; thus where the rate from St. Louis to Shreveport was $1.25, the rate was $1.47 to stations on the T. & P. Ry., between Texarkana and Shreveport, and to stations on the K. C. S. Ry., $1.30; to points between Louisville and Shreveport, $1.27, and to points between Monroe and Shreveport $1.35, while traffic routed via New Orleans paid $1.47 to stations between Alexandria and Shreveport. The Texarkana rates were observed as to maximum to stations intermediate to it and the three gateways, St. Louis, Kansas City and Memphis. The combination through rates from St. Louis to Shreveport via Vicksburg or New Orleans were higher than those published direct to Shreveport in the tariffs under consideration. The rates to Milfay and Chickasha, Okla., for distances of 472 and 584 miles, were lower than the rates to Texarkana, except on classes 1 and 3; and the rates from Memphis to Howe and Red Oak, Okla., for distances of 295 miles and 322 miles, were considerably lower than the rates to Texarkana and Shreveport. Rates from Kansas City to the Dallas-Ft. Worth group, for distances averaging 645 miles, were the same as those to Texarkana. No matter how traffic was routed, it paid a higher rate to stations intermediate than to Shreveport. The history of the class rates from St. Louis and defined territories showed they no longer reflected water competition. **Commodity Rates to Texarkana and Shreveport.** On over 200 commodities the rates to Texarkana exceeded those to Shreveport; where commodity rates were established to Shreveport only, the differentials against Texarkana varied from 1c to 61c, and where commodity rates were published to both points, differentials ranged from nothing to 62c. Among the commodity rates were certain proportional rates from East St. Louis on traffic from seaboard points to Shreveport. These proportionals were not extended to Texarkana, but were published to Shreveport to allow upper Mississippi crossings to participate in traffic which would otherwise move through the lower crossings. It appeared, also, that commodity rates to Milfay and Chickasha, Okla., were higher than those to either Shreveport or Texarkana, and that the direct lines to Shreveport had depressed commodity rates to meet the combinations through the lower Mississippi River crossings. HELD, that class rates from St. Louis, Kansas City, Memphis and defined territories to Texarkana should not exceed those contemporaneously maintained to Shreveport, and that Texarkana rates should be regarded as maximum rates to all points intermediate via the direct lines. The possibility that the grouping of Dallas with Texas points farther

distant from St. Louis might work to its detriment, is no argument against an equitable adjustment of rates to Texarkana. As to commodity rates, the direct lines from St. Louis to Shreveport should not be required to raise their rates in order to place Texarkana on the same basis as Shreveport, since the competition of routes via the lower Mississippi River crossings makes these commodity rates, but the Texarkana rates should not exceed the Shreveport rates, as a maximum, by more than 6c per 100 lbs. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569.

(c) Rates on lumber from Dumas, Minn., to Princeton, Minn., not found to be in violation of section 4, owing to actual and forceful competition. Seavey, Trustee, v. G. N. Ry. Co., Unrep. Op. A-210.

(d) S. E. Case A. General Facts.—The Commission considered the fourth section applications of certain carriers operating in the territory south of the Ohio and east of the Mississippi rivers for permission to continue class and commodity rates for eastern cities, Ohio River crossings and New Orleans, La., to South Atlantic and Gulf ports, to points on navigable rivers and to certain interior basing points in southeastern and Mississippi Valley territory, which were lower than rates concurrently in effect on like traffic from the same points of origin to intermediate stations; and also petitions to continue class and commodity rates from Chicago, Ill., and St. Louis, Mo., to Gulf ports, Mississippi River points, and to Jackson and Meridian, Miss., which were lower than rates on like traffic from points of origin to intermediate stations. Hearings were held at Atlanta, Ga., Birmingham, Ala., Chattanooga, Tenn., New Orleans, La., Chicago, Ill., and Washington, D. C. The position and conformation of the territory involved have brought about competitive transportation conditions therein unlike those in any other large section of the country. It is bounded on all four sides by navigable water, and on the north also by railroad lines of high traffic density, with rates lower than southern lines can afford to accept, and pierced by numerous streams affording transportation between various points which have depressed rates between such points below what they would otherwise have been. Hence the departure of the carriers serving this territory from the rule of the fourth section. This report deals only with rates via defined routes between certain specified points typical of many others in the section. Throughout the report the rates are in cents per 100 lbs., unless otherwise stated. New York, N. Y., has been selected as a representative eastern point; Cincinnati, O., and Louisville, Ky., as representative Ohio River crossings; Augusta, Macon, Hawkinsville, Milledgeville, Dublin and Columbus, Ga., River Junction, Fla., Eufaula, Montgomery, Selma, Tuscaloosa and Demopolis, Ala., and Chattanooga and Memphis, Tenn., as representative destination points located on navigable rivers; Atlanta, Athens, Cordele, and Rome, Ga., Birmingham, Ala., and Meridian and Jackson, Miss., as representative interior basing points of destination; Greenville, Vicksburg, and Natchez, Miss., as representative Mississippi River points; and New Orleans, La., Mobile, Ala., and Pensacola and Tampa, Fla., as representative Gulf ports. The report is confined to rates between these points, and in most cases but one or two routes taken out of many possible routes. The report is divided into twelve lettered subdivisions which follow in separate paragraphs. An investigation was conducted in connection with this case to ascertain the effect upon the revenue of carriers of an absolutely rigid enforcement of the long-and-short-haul clause, and accomplished by reductions at intermediate points without any increase in rates to long-distance points. Thirty-three railroad systems operating 29,000 miles of track, and three steamship companies joined in the check. Among the principal railroad systems were the A. C. L. Ry. Co., C. of G. Ry., L. & N. Ry., C. N. O. & T. P. Ry.; M. & O. Ry. & Southern Ry. in Mississippi; N. C. & St. L. Ry., N. O. & N. E. R. R., A. G. S. R. R., S. A. L. Ry., and Southern Ry. The three steamship lines were the Baltimore Steam Packet Co., the Ocean Steamship Co., of Savannah, and the Old Dominion Steamship Co. The periods selected were the first seven days of December, 1910, March, June and September, 1911; and the purpose of the check was to determine (1) Actual charges on traffic moved at rates effective June 1, 1912; (2) Charges which would have accrued had lowest rate ap-

plicable to any more distant point been applied, and (3) difference between charges actually accruing and those which would have accrued under lower rates as maxima. The difference found on actual shipments during the 28 days being multiplied by 13, gave a reduction in revenue for one year of $12,869,727; the gross freight revenue of all lines participating in the check being $175,936,358 for the fiscal year ending June 30, 1911. The computed losses would thus amount to 6.73 per cent of the total freight earnings. The D. & S. Ry., G. & F. Ry., I. C. Ry., Y. & M. V. R. R., M. & M. T. Co., M. C. R. R., N. O. G. N. R. R., and the N. & W. Ry. did not join in the check. The gross freight revenues of these non-reporting lines, exclusive of that from coal on the N. & W. Ry., was $46,906,161. At the same ratio of loss, the losses of these lines would be $3,156,784; bringing the aggregate losses accruing to all lines in southeastern territory up to $16,026,512. There are 39,900 miles of railroad in this territory, operated by approximately 140 different lines. The records of 78 of these companies show a surplus for the fiscal year 1911, of from $300 to $8,500,000; 8 show a surplus of over $1,000,000; 16 show a surplus of between $100,000 and $1,000,000; 25 between $10,000 and $100,000; and 29 show a surplus less than $10,000. The total surplus was $39,573,012. Forty-five with a total mileage of 3,420 miles, show deficits of from $500 to $1,000,000; aggregating $2,878,381. The net surplus for all lines in southeastern territory was $36,694,631. Deducting $16,026,512 losses, there remains $20,668,109 for dividends. Assuming that the losses above computed would bring about a like reduction on all lines, the surplus on some 20 lines, aggregating 3,345 miles would be wiped out, and three other lines including the C. of G. Ry., would be subjected to such radical reductions as to reduce their surplus to a negligible quantity. The mileage of all roads south of the Ohio river and east of the Mississippi is about 40,000 miles. The net surplus per mile for 1911 was $917; which if the long-and-short-haul rule were rigidly applied would be reduced to $516. Such procedure would so impair the revenues of a large percentage of the lines as to make it impossible to pay even moderate dividends. **A. Rates from New York, N. Y., to South Atlantic Ports.** The all-rail routes here selected from New York to Charleston, S. C., Savannah and Brunswick, Ga., and Jacksonville, Fla., are all via the P. Ry. to Potomac Yards. From Potomac Yards three routes have been selected to each port. They are, with total mileage, as follows: New York to Charleston, via Southern Ry., 846 miles, via R. F. & P. Ry. and A. C. L., 739 miles via R. F. & P. Ry. and S. A. L. 831 miles; New York to Savannah via Southern Ry., 870 miles; via R. F. & P. Ry. and A. C. L. Ry. 854 miles; via R. F. & P. Ry. and S. A. L. Ry., 845 miles; New York to Brunswick, via Southern Ry., 966 miles; via R. F. & P. Ry. and A. C. L., 1,008 miles; via R. F. & P. Ry. and S. A. L., 932 miles; New York to Jacksonville via Southern Ry., 1,042 miles; via R. F. & P. Ry. and A. C. L., 1,026 miles; via R. F. & P. Ry. and S. A. L., 982 miles. The water-and-rail routes selected are in all instances via the O. D. S. Co., from N. Y. to Norfolk, Va., with rail routes thence via the Southern Ry., the A. C. L. and the S. A. L. R. Rs. Assuming the distance, New York to Norfolk, to be 160 miles, as customary with carriers in computing division of rates, mileage via the different routes is as follows: New York to Charleston, via Southern Ry., 746 miles; via A. C. L., 552 miles; via S. A. L., 666 miles; New York to Savannah via Southern Ry., 770 miles; via A. C. L., 667 miles; via S. A. L., 680 miles; New York to Brunswick, via Southern Ry., 866 miles; via A. C. L., 821 miles; via S. A. L., 767 miles; New York to Jacksonville, via Southern Ry., 942 miles; via A. C. L., 839 miles; via S. A. L., 817 miles. The rates on the numbered classes all rail, water and rail, and all water, are as follows:

NEW YORK, N. Y., TO SOUTH ATLANTIC PORTS.

	1	2	3	4	5	6
To Charleston via						
All rail	84	70	59	42	35	30.5
Water and rail	72	60	50	35	29	25
All water	57	47	37	29	24	19
To Savannah via						
All rail	84	70	58	43	41	32
Water and rail	72	60	50	35	29	25
All water	57	47	37	29	24	19
To Brunswick via						
All rail	87	73	59	50	41	32
Water and rail	75	63	53	37	31	27
All water	57	47	37	29	24	17
To Jacksonville via						
All rail 106		87.5	71.5	51.5	41	35.5
Water and rail	75	63	53	37	31	27
All water	67	57	47	33	26	20

Discriminations via the S. Ry. all-rail route, New York to Charleston, begin at Pelham, N. C., 482 miles from New York, and via the S. Ry. water-and-rail at

Greensboro, N. C., 255 miles south of Norfolk. Class rates to Greensboro, were all-rail 96, 83, 70, 55, 47 and 37c, and water-and-rail 84, 73, 61, 47, 41 and 32c; showing discriminations in favor of Charleston of 9, 10, 8, 10, 10 and 5c. All-rail rates from New York to nearly all in the Carolinas and Georgia exceeded the water-and-rail rates by 12, 10, 9, 8, 6 and 5c on the first six classes. Rates from New York increase with distance up to the group of stations, Sharp to Fairwold, S. C., though stations from Winnsboro to Fairwold, S. C., 25 miles, take almost identical rates. To Ridgeway, 26 miles north of Columbia, S. C., the rates on the first six classes all rail are 119, 104, 92, 74, 62 and 49½c for 691 miles, and water-and-rail 107, 94, 83, 66, 56 and 44½c for 591 constructive miles. S. Ry. rates are depressed at Columbia, owing to competition of steamers on the Congaree and Santee rivers. Rates to Columbia are all-rail 108, 91, 79, 66, 53 and 42c and water-and-rail 96, 81, 70, 58, 47 and 37c. Stations Hopkins to Blanchville, S. C., take the highest rates of any points between Columbia and Charleston, all-rail 110, 97, 83, 68, 56 and 44c and water-and-rail 98, 87, 74, 60, 50 and 39c. South of Blanchville the rates decrease to Charleston. On the S. Ry. between Columbia and Savannah the highest rated stations are Yenome to Seigling all-rail 120, 111, 92, 75, 60 and 51½c and water-and-rail 108, 101, 83, 67, 54 and 46½c. Depressions appear at Barnwell and Allendale, S. C., at Barnwell to meet the rates of the A. C. L. Ry., and at Allendale to meet those of the C. & W C. Ry. South of Savannah the rates increase with distance, reaching a maximum at Jesup, Ga., all-rail 117, 101, 85, 67 54 and 40c and water-and-rail 105, 91, 76, 59, 48 and 35c. Passing Jesup, the rates decline as Brunswick is approached, due to lower combination which may be made on Brunswick. From Savannah to Brunswick and Jacksonville the S. Ry. operates over the rails of the A. C. L. The highest rated intermediate point to Jacksonville is Blackshear, Ga., all-rail 122, 108, 91, 76, 60 and 49c and water-and-rail 110, 98, 82, 68, 54 and 44c. Blackshear is 85 miles north of Jacksonville and 957 miles, all-rail, and 857 miles, water-and-rail, from New York via the S. Ry.; and 941 miles, all-rail, and 754 miles, water-and-rail, via the A. C. L. On the route of the A. C. L. discriminations in all-rail routes begin at Gary, N. C., 80 miles south of Richmond, and in water-and-rail rates at Whaley, Va., 31 miles south of Norfolk. Except Tarboro, N. C., rates increase with distance up to Coward, S. C. The depression at Tarboro is due to competition of steamers on the Tar river. Rates to all stations from Hope Mills, N. C., to Saxon, S. C., 160 miles, are almost identical. To Florence, S. C., near the center of the group and the high-rate point for the A. C. L. on the route to Charleston, all-rail rates are 110, 97, 83, 68, 56 and 44c and water-and-rail rates are 98, 87, 74, 60, 50 and 39c. In fourth section order No. 18, approved May 4, 1911, the A. C. L. Ry. was authorized to continue its present rates to Charleston and higher rates to Florence. On the A. C. L. Ry. from Charleston to Savannah the highest rated intermediate station is Green Pond, S. C., the rates being all-rail 127, 106, 90, 71, 58 and 48½c and water-and-rail 107, 90, 81, 67, 53 and 45½c; the usual differentials between all-rail and water and rail rates not being observed as to points between Charleston and Savannah. Green Pond is 785 miles, all rail, and 598 constructive miles, water and rail, from New York. Rates steadily decline from Green Pond to Savannah. South of Savannah they reach a maximum on the route to Brunswick at Hobokan, Ga.; all rail 117, 101, 86, 67, 54 and 45 cents and water and rail 105, 91 77, 59, 48 and 40c. On the route to Jacksonville the highest rated point is Blackshear, Ga. On the route of the S. A. L. to south Atlantic ports discriminations in all-rail rates begin at Hagood and Bracey, 420 miles from N. Y., and in water-and-rail rates at Purvis, Va., 26 miles south of Norfolk. Rates increase with distance to Osborne, N. C., to which rates are all rail 110, 97, 83, 68, 56 and 44c and water and rail 98, 87, 74, 60, 50 and 39c. Osborne rates are blanketed from Osborne to Blaney, S. C., 80 miles. On the S. A. L. between Columbia and Savannah the highest rated intermediate point is Swansea, 724 miles, all rail, and 559 constructive miles, water and rail from New York. Rates to Swansea are all rail 137, 118, 102, 84, 68 and 56c and water and rail 125, 108, 93, 76, 62 and 51 cents. Depressions occur at Denmark and Fairfax, S. C., to meet rates of the S. Ry. and C. & W. C. Ry., respectively. Savannah to Jacksonville the rates reach a maximum at Woodbine, Ga., all rail 131, 113, 94, 73, 61, 51½ cents for 934

miles, and water and rail 119, 103, 85, 65, 55 and 46½c for 769 constructive miles. **Defense.** Petitioners contended that the making of lower rates, all rail and water and rail from New York to South Atlantic ports, than rates to intermediate stations, was justified because; (1) The rates were due to competition of water carriers, line and tramp; petitioners secured but a limited portion of the traffic between North and South Atlantic ports, and any rate increase would result in loss of traffic; (2) the lower rates mentioned are subnormal and fairly remunerative; (3) but such rates though less than reasonable pay something more than the additional cost of the traffic, and subtract from the burden carried by the higher rated intermediate stations; (4) rates to intermediate stations as measured by rates to highest rated intermediate stations are not unreasonable measured by ordinary standards employed by the Commission to test reasonableness. In water transportation between New York and South Atlantic ports, the Clyde line has 20 vessels, capacity 3,508,000 cu. ft., making 4 round trips weekly between New York and Charleston and New York and Jacksonville; 2 trips between New York and Wilmington and Georgetown, S. C.; 2 between Boston, Charleston and Jacksonville; 3 between Jacksonville and Palatka, Fla.; and 3 between Philadelphia and Norfolk. The O. S. C. has 4 ships in New York-Savannah service making 3 trips weekly, capacity 1,308,706 cu. ft.; and 3 ships between Boston and Savannah making two trips weekly, capacity 721,300 cu. ft. The M. & M. T. Co., furnishes service 3 times a week between Baltimore and Jacksonville and between Baltimore and Savannah, twice a week, and between Philadelphia and Savannah, and 5 times between Savannah and Jacksonville. The S. S. Co. operates a line between Philadelphia and Charleston, capacity per week 1,000 tons. The P. & G. S. Co. makes semi-monthly trips between Philadelphia, Charleston and New Orleans, and the B. & C. S. Co. operates weekly service between Baltimore, Charleston and Georgetown, weekly capacity 1,000 tons. The C. S. Co. operates twice a week between Charlestown and Georgetown. In addition considerable low grade tonnage moved into and out of South Atlantic ports by tramp steamers, steamers belonging to lumber companies, and sailing vessels. They constitute a check on the rates of the regular steamship lines, compelling lower rates. During 1910, 98 per cent of all freight moving from New York to Charleston went by water. During the last half of 1911, of all tonnage entering Charleston, excluding all-rail tonnage and that by irregular vessels, 25.7 per cent moved via steamer lines. Of packing-house products received, 43.2 per cent came by water. During 1911 Savannah handled over 2,500,000 bales of cotton and, next to Galveston, Tex., is the largest cotton market in the world. During the same year 404 irregular vessels entered Savannah bringing fertilizer, salt, cement, plaster, coal, iron and steel articles, brick, oil, gravel and hay, approximating 130,172 tons from North Atlantic ports and returning with 50,000,000 board feet lumber and cross-ties. They brought 10,938 tons of cement at 97c a ton as compared with the regular steamship company rate of $1.50. Their approximate rates per ton were fertilizer $1.50, salt $1.25, iron and steel articles $1.70, plaster 97c, coal $1.10, brick $1.09 and hay 90c. During 1911, besides the Clyde vessels, Brunswick had entrances of 143 steamship and 122 sailing vessels engaged in coastwise trade. Jacksonville, population 57,699, is served by the following steamship lines: Clyde line, from New York 4 times a week, from Boston 2 times a week; S. S. S. Co., from Philadelphia, Charleston, Key West and Tampa, once a week; M. & M. T. Co., Baltimore to Savannah and Jacksonville, 3 times a week; Savannah to Jacksonville, 5 times a week. I. S. S. Co., between Jacksonville and Palatka, 3 times a week; J. & M. line, between Jacksonville and Fulton, Fla., 6 times a week; Independent line, between Jacksonville and Green Cove, Fla., 6 times a week; B. & M. line, between Jacksonville and Crescent, Fla., 3 times a week. Arrivals and clearances in coastwise trade for 1911 were 3,492 vessels. Lumber tonnage alone was 223,786,999 board feet. The movement of such irregular vessels between north and south Atlantic ports indirectly depresses rates between stations in eastern trunk line territory and the south Atlantic coast. Many rates are also published from Central Freight Assn territory via rail to New York and thence by ocean are materially less than rates offered by the rail carriers. These rates are forced by the water lines from New York, which absorb the rail rates to New York against the wishes of the rail lines.

The bulk of the tonnage from north to south Atlantic coast cities comes by water at rates materially lower than rates of all-rail lines and water-and-rail lines through Norfolk, and any substantial increase in rates by the latter would clearly result in a loss of revenue to them. A comparison of 800 different rates in southeastern territory disclosed a higher average of rates when made over two or more lines than when over a one-line haul; and the all-rail rates from New York to Charleston, Savannah and Brunswick are less than the average rates for 300 miles over a one-line haul, and those to Jacksonville less than the average for 300 miles over a two-line haul. Rates to south Atlantic ports are far below the level of rates to Chattanooga, Athens, Birmingham, Atlanta and Montgomery; but not lower than rates for like distances in trunk-line territory. The traffic density of the A. C. L., S. A. L. or S. Ry. cannot, however, be fairly compared with that of trunk-line territory. Rates from New York to south Atlantic cities are evidently subnormal, as a result of active competition. The lowest water-and-rail class rate is New York to Charleston and Savannah 25c, to Jacksonville 27c. Lowest all rail to any of these ports is 30.5c. The 25c rate yields 6.5 mills per ton-mile via the longest route, and the 30.5c rate yields 7.2 mills per ton-mile. The lowest commodity water-and-rail rate, 20c, yields 5.2 mills per ton-mile, and the lowest all-rail commodity rate, 25c to Charleston, yields 5.9 mills per ton-mile. Statistics on the A. C. L., S. A. L., and the S. Ry. show the average load per car to have been 14.07 tons, total car miles 525,837,008, total freight revenue $79,394,400, average revenue per car mile 15.1 cent, ratio of operating expenses to operating revenue 67.51 per cent, total operating expenses $82,517,806, total transportation and traffic expenses $44,194,695 or 53.68 per cent of total expenses, average traffic and transportation expenses per car-mile, 5.47c. Their long-distance low-grade traffic moved under carload minimums of from 30,000 to 50,000 pounds, or an average minimum of 40,000 pounds. Twenty-ton carloads could be handled at an out-of-pocket cost of not exceeding 2.73 mills per ton mile. It apeared that none of the rates for long-distance traffic pay less than the additional cost of handling, their acceptance results in some net revenue and does not increase the burden on traffic from intermediate points. Considering the rates to the highest rated intermediate stations via the three lines, it appears that the rates to such points are from 5 to 15 per cent less than the average rates for like distances to non-competitive points. HELD, that the rates to the maximum rate point on the lines above described do not appear to be unreasonable in amount nor out of line with rates to contiguous points in the same territory. Petitioners will be permitted to continue to charge rates to intermediate points from New York and eastern points in excess of the rates to south Atlantic ports, to the extent now existent as provided in their tariffs, but may not increase the disparity nor establish new discriminations of this character without permission. Fourth Section Violations in the Southwest, 30 I. C. C. 153, 178.

(e) **S. E. Case B. Rates from New York to New Orleans, Mobile and Pensacola.**—Some of the routes are via south Atlantic ports, the distance from New York to Charleston Savannah and Brunswick being assumed by the carriers to be 250 miles. The all-rail route is via P. R. R. to Potomac Yard, S. Ry. to Atlanta, A. & W. P. R. R. and W. Ry. of A. to Montgomery, and L. & N. R. R. to New Orleans, Mobile and Pensacola. Distances; to New Orleans, 1,369 miles, to Mobile, 1,230 miles, and to Pensacola, 1,214 miles. The water-and-rail route through Norfolk is via O. D. S. S. Co. to Norfolk, S. Ry. to Atlanta, and thence to destinations via the same lines as in all-rail shipments. Distances; to New Orleans 1,269, to Mobile 1,130, and to Pensacola 1,114 constructive miles. The water-and-rail route through Savannah is via O. S. S. Co. of S. to Savannah C. of G. Ry. to Montgomery, thence via the L. & N. R. R. to destinations. Distances: to New Orleans 954, to Mobile 815, and to Pensacola 799 constructive miles. No regular water carriers operate between New York and Pensacola; but freight is brought to Mobile by boat and shipped to Pensacola over the L. & N. R. R. at rates less than all-water rates to Mobile. The rates from New York to the three ports named were:

New York, N. Y., to—	1	2	3	4	5	6
New Orleans:						
All rail	118	98	78	61	50	44
Water and rail	95	80	65	50	43	36
All water	70	60	50	40	35	30

Mobile:						
All rail	123	103	82	65	53	47
Water and rail	100	85	69	54	46	39
All water	75	65	54	44	38	33
Pensacola:						
All rail official classification	123	103	82	65	53	47
Water and rail via Norfolk or Savannah	75	65	55	45	40	35
Water and rail via Mobile	70	60	50	40	35	30

All-rail rates to New Orleans are exceeded at Juneau, 5 miles south of Charlotte, N. C., and 613 miles from New York, and water-and-rail rates to New Orleans are exceeded at High Point, N. C., 268 miles from Norfolk. Rates increase with distance to Clifton, S. C., 200 miles north of Atlanta, rates to Clifton being all rail 126, 108, 95, 81, 66 and 54c and water and rail 114, 98, 86, 73, 60 and 49c. These rates are blanketed to Atlanta, Ga., except Gainsville and New Holland, Ga., to which the rates are all rail 117, 103, 92, 76, 62 and 49c and water and rail 105, 93, 83, 68, 56 and 44c. On the West Point route (between Atlanta and Montgomery via the A. & W. P. R. R. and the W. Ry. of A.) rates increase with distance to McCollom, Ga., to which station the rates are, all-rail, 141, 124, 111, 93, 76 and 60c and water and rail 129, 114, 102, 85, 70 and 55c. Depression occurs at Newman, Ga., due to competition with the C. of G. Ry., the rates being all rail 137c, 121c, 107c, 89c, 73c and 59c and water and rail 125c, 111c, 98c, 81c, 67c and 54c. The next three stations, McBride, Moreland and St. Charles, take the rates of all rail 139c, 123c, 110c, 92c, 75c and 60c and water and rail 127c, 113c, 101c, 84c, 69c and 55c. South of St. Charles rates decrease as La Grange is approached. The next high-rate point is Gabbettsville, Ga., with rates all rail 132c, 116c, 103c, 85c, 70c and 56c, and water and rail 120c, 106c, 94c, 77c, 64c and 51c. Depression occurs at West Point, Ga., with rates all rail 120c, 105c, 93c, 77c, 63c and 50c and water and rail 108c, 95c, 84c, 69c, 57c and 45c Rates rise again to Cusseta, Ala., to return to the West Point scale at Opelika, Ala. They then increase to Franklin, Ala., the maximum point on the West Point route with rates all rail 155c, 137c, 121c, 99c, 82c and 66c and water and rail 143c. 127c, 112c, 91c, 76c and 61c. Franklin is 141 miles from Atlanta, and 1,017 miles all rail and 917 constructive miles, water and rail, from New York. South of Franklin rates decrease to Montgomery, which takes the West Point rates. The depressions at La Grange and West Point are due to competition of the A., B. & A. R. R., which with the C. V. Ry. forms the short line from Brunswick to West Point; while that at Opelika is due to the C. of G. which furnishes a route from Savannah of 319 miles. On the route of the L. & N. from Montgomery to the Gulf ports named water-and-rail rates increase to Ft. Deposit, Ala., at which point they are 135c, 117c, 101c, 86c, 75c and 62c; and all-rail rates increase to Evergreen, Ala., at which point they are; 171c, 149c, 132c, 111c, 94c and 79c. Evergreen, 81 miles south of Montgomery and 1,132 miles from New York is the high-rate point on the all-rail route to the Gulf port. Up to Ft. Deposit the all-rail rates exceed the water-and-rail rates through Norfolk and south Atlantic ports by the same differential as apply in the Carolinas and Georgia. Thence south they bear no fixed relation to water-and-rail rates, but exceed the latter in some instances by as much as 48c on first class. From Ft. Deposit and beyond water-and-rail rates decrease to Mobile and Pensacola. Higher rates are charged to stations between Mobile and New Orleans and between Mobile and Pensacola than to these points. On the C. of G. Ry. from Savannah to Montgomery rates increase to Toomsboro. Ga., 155 miles from Savannah. West of Columbia rates increase to Nuckols, Ala., to which they are 130c, 111c, 98c, 83c, 69c and 56c. These rates are applied as blanket rates up to the first station east of Montgomery. South of Montgomery the same rates are applied on the route through Savannah as on that through Norfolk.

Defense. Carriers sought to justify lower water-and-rail rates via Norfolk and south Atlantic ports or all rail via Potomac Yards to Mobile, New Orleans and Pensacola, on the ground (1) that the rates to the latter points are necessitated by water competition between them, actual or potential, (2) that the rates necessitated are subnormal, (3) that though subnormal they yield revenue in excess of actual cost of handling, and (4) that rates to intermediate stations are not unreasonable. The Morgan line operates two boats per week between New York and New Orleans, and the P. & G. S. S. Co. one boat per week between Philadelphia and New Orleans. The M. S. S. Co. operates one boat per week between New York and

Mobile. The Morgan line handles the bulk of tonnage between eastern seaboard and New Orleans. During first 11 months of 1911 the movement south aggregating 246,000 tons, and the northbound tonnage 201,000 tons. The tonnage of the M. S. S. Co. into Mobile for Jan. and Feb. 1912, was 2,088 tons, while deliveries of the S. Ry. and L. & N. R. R. from the same territory were only 327 tons. Rates from eastern seaboard via New Orleans to points in Mississippi and Louisiana south of the line from Vicksburg through Jackson and Meridian are lower than the water-and-rail rates by 18c, 14c, 11c, 8c, 6c and 4c, and these differentials are the lowest existing between water-and-rail rates via New Orleans and those via south Atlantic ports. In Alabama and Mississippi east of Meridian and south of the line of the S. Ry. and W. Ry. of A. from Meridian to Montgomery, and west of the L. & N. R. R., from Montgomery to Pensacola, rates through Mobile are 12c, 10c, 9c, 7c, 4c and 3c less than rates through south Atlantic ports. These differentials increase toward the Gulf, until they become at Mobile the difference between the water-and-rail and all-water rates to the port. The differentials in favor of routes through New Orleans and Mobile through to the water routes a great part of the traffic to the southern portion of Alabama and Mississippi. The Morgan line publishes through rates from all the states northeast of North Carolina, which do not include marine insurance, which, however, is only 15 cents per $100. From Boston the all-rail and water-and-rail rates equal those from New York, while the Morgan line rates are 2c, 1c, 1c, 1c, 0c and 1c higher than its New York rates. From Buffalo and Pittsburgh the all-rail rates are 116c, 95c, 79c, 61c, 49c and 43c as compared with rates via New York and the ocean of 98c, 81c, 68c, 53c, 43c and 39c. From Norfolk, Richmond and vicinity the all-rail rates to New Orleans are 95c, 80c, 65c, 50c, 43c and 36c as compared with Morgan line rates of 80c, 68c, 56c, 43c, 38c and 32c. The M. S. S. Co. applies the same rate basis to Mobile from all interior points to the northeast of North Carolina as does the Morgan line to New Orleans, resulting in rates lower than the all-rail lines or water-and-rail lines via Norfolk. There are no published all-water rates to Pensacola, and the total tonnage by water to Pensacola in 1911 was only 1,948 tons from the Atlantic seaboard. A comparison of the all-rail class rates to New Orleans and Mobile and Pensacola with rates under official and western classification to Omaha, Denver, Des Moines and Minneapolis, and with commodity rates from New York to Minneapolis and Texas common points indicates that the rates to the three gulf ports are substantially lower. The lowest all-rail rate to New Orleans is 41 cents per 100 pounds on roofing paper yielding 6 mills per ton-mile and the lowest commodity rate, rail and water, is 33 cents on iron and steel articles and paint, yielding 5.4 mills per ton-mile. The lowest water-and-rail rate on a numbered class is 36 cents on class 5 to New Orleans, yielding 5.6 mills per ton-mile. First-class rates to the highest rated intermediate points, Evergreen, Franklin and Ft. Deposit, Ala., are 171c, $1.43 and $1.35 for 1,136, 917 and 659 miles, respectively, as compared with an average rate of 137 for 650 miles. HELD, no justification exists for making water-and-rail rates through Mobile lower than all-water rates to Mobile; that the rates to the three gulf ports are subnormal and less than might reasonably be charged; that they afford a revenue above the additional cost of handling the traffic; that the rates to the highest rated intermediate points are not out of line with rates for like distances through the same territory. Petitioners authorized to continue to maintain such rates to New Orleans, Mobile and Pensacola as will enable them to meet the competition of water carriers, and to maintain higher rates to intermediate points. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 188.

(f) S. E. Case C. Rates from New Orleans to South Atlantic Ports and Tampa.—The route from New Orleans to Charleston is wia the L. & N. R. R., to Montgomery, the West Point route to Atlanta, the Ga. Ry. to Augusta, and S. Ry. to Charleston, 793 miles. Rates to Charleston are not exceeded at intermediate stations south of Brewton, Ala., and the disparities at points beyond on the L. & N. R. R. are small. On the West Point route the rates reached a maximum at Chehaw, Ala., and a second maximum at Gabbettsville, Ga., with a depression at Opelika, Ala., intervening. On the Ga. Ry. the rates increase to Buckhead, Ga., 568 miles from New Orleans, this being the high-rate point of the entire line. From New Or-

leans to Savannah the route was via the L. & N. R. R. to Montgomery, and the S. A. L. thence, 656 miles. First-class rates on the S. A. L. advanced from 117 cents at Merry, Ala., the first station east of Montgomery, to $1.42 at Cottonton, Ala. To the next station, Omaha, Ga., the rate was $1.40 and from there the rate declined to $1.35 at Preston, Ga., to return to $1.39 at Huntington and Leslie and $1.42 at De Sota, Ga., after which it declined to $1.19 at Cordele, Ga., and then increased with distance to $1.51 at Alamo, to $1.55 at Milan, Ga. It again increased after which it decreased steadily with distance to 91 cents to Savannah. The route from New Orleans to Brunswick is via L. & N. R. R. to River Jc., Fla., and thence via the A. C. L., 623 miles. Rates on the L. & N. R. R. do not exceed the rates to Brunswick until Harold, Fla., is reached. The first-class rate increased from 90 cents at Harold to $1.02 at Grand Ridge, Fla. At the succeeding stations, Sneads and River Jc., Fla., and Recovery, Ga., it falls to 93c and 91c and then increases with the distance up to $1.39 at Thomasville, Ga. The rate then fluctuates until Homerville and Cutting, Ga., are reached, where the highest intermediate rate, $1.40, is attained. The rate then decreases steadily to 91 cents at Brunswick. The route to Jacksonville is via the L. & N. R. R. to River Jc., Fla., and thence via the S. A. L. 612 miles to River Jc., the first-class rate is 93 cents. The rate increases to the highest intermediate, $1.48 at Midway; Tallahassee takes a rate of $1.24 at the next station, Chaires, Fla., rate is $1.44. It then decreases with distance until Lee, Fla., is reached, to which point the rate is $1.34. From this point the rate decreases steadily to 72 cents at Jacksonville. The route from New Orleans to Tampa is via the L. & N. R. R. to River Jc., thence via the S. A. L. through Baldwin, Fla., to Tampa, 788 miles. To Baldwin the first-class rate is $1.00. From there the rate increases with distance to $1.50 at Turkey Creek, Sidney and Brandon, Fla., with the exception of a depression at Waldo, the third station south of Baldwin, which takes a rate of $1.06. After Blandon the rate decreases to $1 22 at Tampa.

Defense. Carriers sought to justify lower rates on classes and commodities from New Orleans to the ports named than the rates to intermediate points on the grounds (1) that such rates were necessitated by water competition on the Atlantic and the Gulf, (2) that the rates are subnormal, but (3) pay more than the additional cost of handling, and (4) that the rates to intermediate stations are not unreasonable. The P. & G. S. S. Co. furnishes a semi-monthly service between Charleston and New Orleans, and the P. S. S. Co. a regular all-water service between Tampa and New Orleans. There is no regular all-water service between Tampa and New Orleans and Savannah, Brunswick or Jacksonville, water service being furnished only by irregular steamers and sailing vessels. Sugar, coffee, molasses, and rice move solely by water between New Orleans and Charleston. There is a heavy coastwise movement between the designated destinations and other Atlantic and Gulf ports. Tampa, population 37,782, is served by A. C. L., S. A. L. and Tampa Northern railroads, and by the M. S. S. Co., S. S. S. Co., T., H. P. & S. S. S. Co., St. P. T. Co., and P. S. S. Co. First-class all-rail rates from New Orleans to Charleston, Savannah, Brunswick and Jacksonville are 91c, 91c, 91c and 72c, respectively, for distances of 793, 656, 623 and 612 miles, as compared with water-and-rail rates from New York to Atlanta, Athens and Montgomery of $1.05, $1.05, and $1.08 for 776, 751 and 588 constructive miles. The lowest rates involved paid more than 1c per ton mile. Rates to intermediate stations west of Augusta are discussed in subdivision "H". East of Augusta the route chosen is over the S. Ry. and rates are blanketed to all stations from Windsor to Ladson, S. C., the blanket being 80 miles in length and its center approximately 750 miles from New Orleans. The blanket rates are $1.13, 99c, 83c, 70c, 53c and 45c. On the route to Savannah over the L. & N. and S. A. L. the rates to Cordele, Ga., and west are discussed in subdivision "K". The scale of rates maintained at Helena, 50 miles east of Cordele, is made over a distance of approximately 542 miles. These rates are slightly in excess of average rates in this territory for corresponding distances. Though the S. A. L. meets competition at Helena, its physical and financial condition are not such as to justify low rates at that point. Rates to stations west of Helena are made over an average distance of 600 miles. On the route to Brunswick, rates to River Jc. are depressed by competitions via the Chattahoochee River. The rates to three stations east of River Jc., viz., Thomasville, Quitman and Valdosta, are

markedly out of line with nearby stations. The first-class rate to Pine Park is $1.08 and to Thomasville $1.39, while Pine Park is a local station and Thomasville a junction point. The rates to Quitman and Valdosta exceed to a marked degree the rates to stations on each side. The route to Jacksonville, Fla., is via the L. & N. to River Jc., thence over the S. A. L. to Jacksonville. East of River Jc. the S. A. L. is intersected at Quincy and Tallahassee by the G., F. & A. R. R. at Capitola, near Drifton, by the F. C. R. R.; at Greenville by the S. G. Ry., and at Madison by the G. & F. R. R. Approximately the same rates are made to Quincy, Tallahassee, Greenville, and Madison, which are materially lower than rates to contiguous stations. Rates to Tallahassee are exceeded at Midway by differentials of 24c, 21c, 23c, 30c, 23c and 20c. Rates to Greenville and Madison are exceeded at Midway, Chaires, Lloyd, Drifton and Aucilla. The route to Tampa covers the same line as previously described up to Baldwin, Fla. South of Baldwin the rates grade uniformly with distance to Brandon, 11 miles north of Tampa. Brandon is 777 miles from New Orleans and the rates compare favorably with other rates for like distances in the same locality. HELD, that the very large movement of coastwise vessels into and from Tampa, the low scale of rates applied by rail carriers and their long standing, indicate that the rates between New Orleans and Tampa have been influenced by water competition. As measured by comparisons with other rates, both to competitive and non-competitive points, rates to Charleston, Savannah, Brunswick, Jacksonville and Tampa are subnormal. Petitioners may continue lower rates to Charleston and present higher rates to intermediate points. The Savannah rates to points between Cordele and Helena should not exceed the Helena rates. Petitioners may continue lower rates to Savannah and higher rates to intermediates, provided rates to points west of Helena do not exceed present Helena rates by more than 5 per cent and in no case the combination on Savannah. On the route to Brunswick, rates to Boston, Ga., should not be exceeded at Thomasville, rates to Oley, Ga., should not be exceeded at Quitman, Ga., nor rates to Naylor by rates at Valdosta. On the route to Jacksonville the rates should grade with distance until a maximum rate point is reached between Madison and Lake City, east of which the rates should diminish as Jacksonville is approached, in no case exceeding the combination on Jacksonville. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 188.

(g) **S. E. Case D. Rates from Ohio River Crossings to south Atlantic ports.** In order to show more clearly the relation of rates from all Ohio River crossings to south Atlantic ports, Cincinnati and Louisville are taken as representative crossings and a selected route discussed from each crossing to each of the south Atlantic ports. The route from Louisville to Charleston is via the L. & N. R. R. to Nashville; the N., C. & St. L. Ry. to Atlanta; the Ga. Ry. to Augusta, and the S. Ry. to Charleston; 779 miles. Rates to intermediate stations north of Chattanooga do not exceed rates to Charleston. Beginning south with a first-class rate of 70c at Chattanooga, rates increase with distance to $1.18 at Kennesaw, Ga., with the exception of a depression at Cartersville, Ga., to which the rate is 98c. Beyond Kennesaw the rate fluctuates, falling to 98c at Atlanta, Ga.; the rate increases from $1.10 at Decatur, Ga., to $1.36 at Buckhead, Ga., thence to Barnett, Ga., to which the rate is $1.34, the rate fluctuates, after which it decreases with distance to Augusta, Ga. On the S. Ry. the rate steadily decreases from $1.08 at Bath, S. C., to 95c at Charleston. The route from Cincinnati to Charleston is via the C., N. O. & T. P. Ry. to Harriman Junction, and thence via the S. Ry. through Morristown, Asheville, and Columbia to Charleston; 732 miles. Rates to Charleston are not exceeded at intermediate stations west of Knoxville, Tenn. From 76c at Knoxville, first-class rates increase to $1.06 at Alpha, Tenn. Stations from Morristown, Tenn., to Asheville, N. C., are under a blanket rate of 99c. Rates in excess of $1.00 prevail up to Woodstock, S. C., the next station to Charleston, which takes a rate of 95c. From Louisville, Ky., to Port Royal, S. C., the route is via the L. & N. R. R. to Nashville, Tenn., the N., C. & St. L. to Atlanta, the Georgia Ry. to Augusta, and the C. & W. C. Ry. to Port Royal; 758 miles. The rates to stations west of Augusta are the same as those on the route, Louisville to Charleston. Rates, first class, increase with distance from $1.03 to Augusta to $1.45 to Hattieville and Millett, S. C., with the exception of a depression at Robbins, S. C.,

which takes a rate of $1.17. They then decrease with distance to Port Royal, to which the rate is 95c. The route from Cincinnati, O., to Port Royal is via the C., N. O. & T. P. Ry. to Harriman Junction, the S. Ry. to Spartanburg, S. C., and the C. & W. C. Ry. through Augusta to Port Royal; 753 miles. Rates to points west of Spartanburg are the same as those on the route to Charleston. From a rate of $1.16 to Spartanburg rates advance with distance to $1.45 at Hattiesville and Millett, S. C., with the exception of depressions at Augusta, Ga., and Robbins, S. C. The rate then decreases from $1.44 at Averills, Martins and Beldos, S. C., to 95c at Port Royal. From Louisville to Savannah the route is via the L. & N. R. R. to Montgomery, Ala., and thence via the S. A. L. Ry. to Savannah, 829 miles. The rates to Savannah are not exceeded at intermediate stations north of Decatur, Ala. First class rates increase from 93c at the next station, Holmes Gap, Ala., to $1.08 at Coosada, Ala., with the exception of a depression at Birmingham, Ala., to which the rate is 79c; to Montgomery, the next station after Coosada, the rate is 98c. On the S. A. L. rates increase from $1.26 to Sledges, Ala., to $1.51 to Cottonton, Ala., and then fluctuate until a rate of $1.59 is finally attained, to Milan, Ga. At the next station, Helena, Ga., the rate is depressed to $1.43. It then decreases with distance from $1.55 at Alamo, Ga., to 95c at Savannah. The route from Cincinati to Savannah is via the C., N. O. & T. P. Ry. to Harriman Junction, and the S. Ry. through Asheville and Columbia to Savannah, 756 miles. Rates as far south as Columbia have been given in connection with rates to Charleston. From a first class rate of $1.07 to Columbia rates advance to $1.47, blanketed over stations Yenome, S. C., to Seiging, S. C. Allendale, S. C., the next station, takes a rate of $1.42. Rates then decrease with distance from $1.45 at Barton, S. C., to 95c at Savannah. From Louisviille, Ky., to Brunswick, Ga., the route is via the L. & N. R. R. to Montgomery, and the A. C. L. to Brunswick, 863 miles. Rates to stations north of Montgomery have been described in connection with rates to Savannah. From a first class rate of 98c at Montgomery, rates increase to $1.40, blanketed from Banks to Ariton, Ala. Rates then fluctuate until a rate of $1.46 is attained at Climax, Ga., applicable to all points from Climax to Dupont, Ga., with the exception of Thomasville, Quitman and Valdosta, Ga., at which points the rate is depressed to $1.43. From Cutting and Homerville, Ga., the rate decreases with distance from $1.44 to 95c at Brunswick, except that the rate to Nahunta, Ga., is $1.36. From Cincinnati, O., to Brunswick, Ga., the route is via the C., N. O. & T. P. Ry. to Chattanooga, and the S. Ry. to Brunswick, 767 miles. Rates to points north of Chattanooga do not exceed the rates to Brunswick. From a first class rate of 70c at Chattanooga, rates increase to $1.22 at Oostanaula and Reeves, Ga., with the exception of a depression at Dalton, Ga., to which the rate is 97c. From $1.21 at Plainville, Ga., rates decrease up to Rome and Lindale, Ga., which take a rate of 98c, then increase from a rate of $1.13 at Silver Creek and Chambers, Ga., to $1.31 at McPherson, Ga.; they then decrease until a rate of 98c is reached, applicable to Chattahoochee, Atlanta and Roseland, Ga. Rates then increase with distance from $1.13, applicable at Constitution, Ga., to $1.36 to Flovilla and Cork, Ga., and decrease to $1.03 at Macon. The high rate point on this route is Scotland, Ga., to which the rate is $1.54. From this point the rate decreases with distance to 95c at Brunswick. From Louisville to Jackson the route is via the L. & N. R. R. to River Junction, Fla., and the S. A. L. to Jacksonville, 960 miles; from Cincinnati to Jacksonville the route is via the C., N. O. & T. P. Ry. to Chattanooga, S. Ry. to Jesup, Ga., and A. C. L. to Jacksonville, 843 miles. DEFENSE. Carriers seek to justify the according of lower rates from Ohio River crossings to South Atlantic ports than to intermediate stations on the grounds (1) that competition of trunk lines from Ohio River cities and Central Freight Association territory to north Atlantic ports, with steamship lines therefrom to south Atlantic ports, necessitates maintenance of present rates to these ports; (2) that such rates are subnormal, (3) but pay more than additional cost of handling, and (4) that rates to intermediate points are not unreasonable. Rates made by trunk lines and water carriers from Ohio River crossings and points in Central Freight Association territory to south Atlantic ports are generally lower than rates made by the all-rail lines operating from and through the crossings. On the route rates from Cincinnati, Louisville, St. Louis, Mo., Chicago, Ill., Detroit, Mich., Ft. Wayne, Ind., Grand

Rapids, Mich., and South Bend, Ind., are, respectively, all-rail, 95c, 95c, $1.18, $1.30, $1.31½, $1.28, $1.38, $1.30, and the rates via New York and Ocean are $1.02, $1.12, $1.24½, $1.12, 95c, $1.04½, $1.09 and $1.09. Section 2 of the tariff of the trunk lines serving Ohio River points through Baltimore in connection with the M. & M. T. Co. published rates to south Atlantic ports, 8c, 6c, 5c, 4c, 3c, 2c, 2c, 2c, 3c and 4c lower on the first ten classes than rates of the all-rail lines. If rates made on this basis governed by Southern Classification are lower than published rates of the Official Classification, the lower rates are applied. Commodity rates via New York and Ocean are also much lower than commodity rates via all-rail lines. Charleston and Port Royal are the nearest south Atlantic ports to the Ohio River crossings, their distance being 750 miles, as against 900 miles to Jacksonville. The average haul on all freight carried via these routes is about 800 miles, yet there are rates in effect on all classes over this haul, participated in by two or more lines in each case, which are below the all-rail rates from New York to Atlanta, Chattanooga, Athens, and all other points in southeastern territory at a like distance from New York, and below average rates over two-line hauls in southeastern territory for a distance of 300 miles. For the purpose of comparing traffic in different parts of the United States, the country is divided into groups. Taking the first class rates for comparison, the rates to south Atlantic ports, the all-rail group 2 includes New Jersey, Delaware and Maryland, most of New York and Pennsylvania, and some of West Virginia. Group 3 includes Indiana, Ohio, southern peninsula of Michigan, some of West Virginia, New York and Pennsylvania. Group 5 comprises Kentucky, Tennessee, Alabama, Mississippi, Georgia, Florida, and Louisiana east of the Mississippi River. For groups 2, 3 and 5 the gross earnings per mile were, respectively, $22,009, $13,263 and $7,170; the traffic density in tons per mile 2,422,317 tons, 1,624,956 tons and 605,280 tons; average tons in trains 478.63, 428.72 and 256.50; and net income per mile of road $3,438.83, $1,625.60 and $599.54. The lowest rate on any of the classes to south Atlantic ports is 25 cents on class D, which, applying over the longest route considered, 960 miles, yields 5.2 mills per ton-mile. The highest rates on the S. Ry. between Augusta and Charleston are those beginning with Windsor and ending with Elko, S. C. Rates to Windsor are $1.17, $1.07, 86c, 67c, 55c and 47c for 672 miles, as compared with rates of $1.37, $1.18, $1.06, 90c, 74c and 60c shown by Exhibit No. 117 for 650 miles and $1.42, $1.26, $1.13, 94c, 80c and 66c for 700 miles. Rates slightly below those to Windsor are blanketed Blackville to Ladson, S. C., 60 miles. Rates to intermediate stations between Augusta and Charleston are far below the level of average rates to non-competitive points in southeastern territory over like distances. On the route from Cincinnati to Charleston the highest rated points are stations, Flat Rock to Campton, N. C. The rates to Flat Rock are $1.20, $1.07, 91c, 71c, 58c and 49c for 465 miles, as compared with average rates of $1.14, $1.00, 89c, 74c, 62c and 50c for 450 miles South of Columbia, from Lee to Woodstock, S. C., 60 miles, a blanket rate, below the level of average rates to non-competitive points in southeastern territory over like distances, applies. The rates to intermediate stations west of Augusta on the route from Louisville to Port Royal are discussed in subdivision I. The highest rated intermediate station is Hattiesville, 80 miles from Port Royal, and 678 miles from Louisville. Rates to Hattiesville are $1.45, $1.25, $1.13, 95c, 76c and 62c, as compared with average rates of $1.42, $1.26, $1.13, 94c, 80c and 66c. As to the rates to stations between Augusta and Port Royal on the route from Cincinnati to Port Royal, the distance to the stations is about the same as from Louisville, rates are the same and the maximum-rate point is also Hattiesville. On the route from Louisville to Savannah the rates from Louisville, Cordele and intermediate stations are discussed in subdivision L. East of Cordele rates reach a maximum at Milan, Ga., 124 miles from Savannah and 705 from Louisville. Rates to Milan are $1.59, $1.38, $1.26, $1.04, 86c and 68c for 705 miles, as compared with average rates of $1.42, $1.26, $1.13, 94c, 80c and 66c for 700 miles. Milan is 10 miles west of Helena, Ga., a junction point with the S. Ry., which takes the rates, $1.43, $1.24, $1.10, 90c, 74c and 59c. Helena is 632 miles from Louisiana via the S. Ry. and C., N. O. & T. P. Ry., and 715 miles via the L. & N. and S. A. L. On both routes higher rates are maintained to intermediate points. On the route from Cincinnati to Savannah south

of Columbia the highest-rated points are Yenome to Furnam, S. C., 36 miles. The rates to Yenome, 87 miles from Savannah and 669 miles from Cincinnati, are $1.47, $1.27, $1.04½, 79½c, 66c and 55c. Rates on the first two classes are slightly higher, but on the last four considerably lower than the average rates for like distances. On the route from Louisville to Brunswick rates to stations north of Montgomery are discussed in subdivision I. East of Montgomery depressions appear at Ozark, and Dothan, Ala., and Bainbridge, Thomasville, Quitman and Valdosta, Ga. The first two are junction points with the C of G. Ry. and all enjoy the same rates from Louisville, namely $1.36, $1.16, $1.02, 86c, 71c and 58c, which are 4c, 4c, 3c, 2c, 2c and 2c less than rates on corresponding classes to local stations in the vicinity. The rates to Bainbridge, on the Flint River, are influenced by water competition and are slightly lower than the rates to Ozark, Troy and Dothan, Thomasville, Quitman and Valdosta; all take the same rates, viz., $1.43, $1.24, $1.10, 90c, 74c and 59c; small differentials less than the rates applicable to local stations in the same territory. East of Bainbridge the rates to local stations are small differentials only over rates to junction points. On the route from Cincinnati to Brunswick, south of Macon, a depression appears at Helena and McRae, Ga., stations but two miles apart. Helena, 656 miles from Cincinnati and a junction point with the S. A. L., takes rates from Cincinnati of $1.43, $1.24, $1.10, 90c, 74c and 59c, being 8c, 10c, 9c, 9c, 6c and 4c less, respectively, than rates at Achord, 3 miles north of Helena. On the route from Louisville to Jacksonville, east of Pensacola rates accord with fourth section except those to River Junction, Fla. It is on the Apalachicola River, which has influence on rates. East of the river, depressions appear on the S. A. L. at Tallahassee, Greenville, Madison and Live Oak, Fla., all junction points connected by transverse lines with the A. C. L. The rates to these junctions are $1.47, $1.27, $1.13, 93c, 78c and 64c; rates materially less than those to intermediate stations. On the route from Cincinnati to Jacksonville, slight depressions at Hortense and Nahunta are due to proximity of these points to Brunswick and the lower combination that can be made on that point. HELD, that petitioners may continue class and commodity rates from Louisville, Ky., and Cincinnati, O., to Charleston and Port Royal, S. C., Savannah and Brunswick, Ga., and Jacksonville, Fla., and contiguous points, which are lower than rates to intermediate stations, provided (1) that on the route from Louisville to Charleston rates to stations between Augusta and Charleston affected by combination on either of these points do not exceed such combination and that rates to other stations not so affected are not increased; (2) that on the route Cincinnati to Charleston, rates to stations, Columbia, S. C., to Charleston affected by combination one of these points shall not exceed such combination and that rates not so affected are not increased; (3) same limitations on route Louisville to Port Royal, as to stations between Augusta and Port Royal; (4) same on Cincinnati to Port Royal route as to stations Augusta to Port Royal; (5) that on or before Oct. 1, 1914, on route Louisville to Savannah, rates on stations west of Helena be so corrected as not to exceed Helena rates, rates to stations east of Helena not to exceed Helena rate by more than 5 per cent; (6) on route Cincinnati to Savannah, rates to stations Columbia, S. C., to Savannah affected by combination on one of these points not to exceed such combination and the rates to stations not so affected not to be increased; (7) on or before Oct. 1, 1914, on route Louisville to Brunswick, rates to stations Montgomery to Dupont, Ga., except Bainbridge, be so corrected as to avoid departures from the long-and-short-haul clause; (8) by same date on route Cincinnati to Brunswick, rates to stations, Macon, Ga., to Helena, Ga., be corrected so as not to exceed Helena rates, and stations south of Helena not to exceed Helena rates by more than 5 per cent; (9) by same date on route, Louisville to Jacksonville, rates to stations River Junction, Fla., to Wellborn, Fla., be so corrected as to avoid violations of the long-and-short-haul clause; (10) that on the route Cincinnati to Jacksonville, rates to stations, Jesup, Ga., to Jacksonville, not to exceed combination on either Brunswick or Jacksonville. Violations of Fourth Section in the Southeast, 30 I. C. C. 153, 197.

(h) **S. E. Case. E.—Rates from Ohio River Crossing, St. Louis, Mo., and Chicago, Ill., to Gulf Ports.**—Rates from Cairo, Ill., to New Orleans, Mobile and Pensacola; from Louisville and Cincin-

nati to New Orleans, Mobile, Pensacola and Tampa, and from St. Louis and Chicago to New Orleans, Mobile and Pensacola are discussed. The routes are: (1) From Cairo to New Orleans via the I. C. C. R. R., 556 miles; (2) from Cairo to Mobile via the M. & O. R. R., 502 miles, rates from Cairo to stations north of Saltillo, Miss., not exceeding the rates to Mobile; (3) from Cairo to Pensacola via the M. & O. R. R. to Mobile and the L. & N. R. R. to Pensacola, 606 miles, the rates from Cairo to stations north of Mobile having been given under the preceding route; (4) from Louisville to Mobile via the L. & N. R. R., 670 miles, the rates to intermediate stations north of Montgomery being given in subdivision L (5); from Louisville to New Orleans via the L. & N. R. R., 809 miles, rates to Mobile and stations intermediate being given under the preceding route; (6) from Louisville to Pensacola via the L. & N. R. R., 654 miles, the route corresponding with the route to Mobile as far as Flomaton, Ala., and the rates to stations Montgomery to Flomaton being given under route 4; (7) from Louisville to Tampa, via the L. & N. R. R. to River Junction, Fla., and S. A. L. Ry. to Tampa, 1,198 miles, the rates to points west of Jacksonville being given in subdivision C; (8) from Cincinnati to Mobile via the L. & N. R. R., 784 miles, the rate to stations north of Mitchelville, Tenn., not exceeding the rates to Mobile; (9) from Cincinnati to New Orleans via the L. & N. R. R., 923 miles, the rates to points north of Mobile being given under the preceding route; (10) from Cincinnati to Pensacola, via the L. & N. R. R., 768 miles, the route being the same up to Flomaton, Ala., as the route to Mobile; (11) from Cincinnati to Tampa, via the C., N. O. & T. P. Ry. to Chattanooga, the S. Ry. to Jacksonville and the S. A. L. to Tampa, 1,065 miles, rates to stations north of Jacksonville being given in subdivision C; (12) from St. Louis, Mo., to New Orleans, La., via the I. C. R. R., 707 miles; (13) from St. Louis to Mobile, via the M. & O. R. R., 657 miles, rates to stations north of Perry, Tenn., not exceeding the rates to Mobile; (14) from St. Louis to Pensacola, via M. & O. R. R. to Mobile, and L. & N. to Pensacola, 761 miles, rates to stations north of Mobile being shown under the preceding route; (15) from Chicago to New Orleans, via I. C. R. R., 920 miles, rates to New Orleans being exceeded north of Jackson, Tenn.; (16) from Chicago to Mobile, via C. R. R. to Cairo and M. & O. R. R. to Mobile, rates to Mobile not being exceeded north of Jackson, Tenn., and (17) from Chicago to Pensacola, via C. & E. I. R. R. to Evansville, Ind., and L. & N. R. R. to Pensacola, rates to Pensacola not being exceeded at stations north of Nashville, except fifth class rates at Casky, Ky., where there is an excess of 1c. DEFENSE. Carriers sought to justify the maintenance of lower rates from designated points of origin to Mobile, New Orleans, Pensacola and Tampa than to intermediate points on the grounds: (1) That rates to New Orleans had been induced by competition of water carriers on the Ohio and Mississippi rivers, the rates to Mobile by competition of water carriers on the Ohio and Mississippi rivers, on the Mississippi Sound and on the Gulf, and by rivalry for trade between New Orleans and Mobile, rates to Pensacola were induced by water competition on the Ohio and Mississippi rivers and Gulf, trade rivalry between Mobile and Pensacola as distributing centers and by competition of rival carriers serving them, and rates to Tampa were induced by competition of water carriers on the Ohio and Mississippi rivers and the Gulf; (2) that rates to these ports are subnormal, but (3) that such rates pay more than the additional cost of handling, and (4) that rates to intermediate points are not unreasonable. In 1874 tonnage moving by water from St. Louis to Vicksburg, from St. Louis to New Orleans and from lower Mississippi River Valley points to St. Louis was, respectively, 156,770 tons, 282,585 tons and 169,780 tons. These figures had decreased by 1904 to 43,145 tons, 3,175 tons and 132,585 tons. The number of boats operating on the Mississippi River between St. Louis and points south had decreased from 792 departures and 752 arrivals in 1874 to 237 departures and 246 arrivals in 1909. Rates on the first six classes from Louisville to St. Louis decreased from 105, 75, 65, 45, 35 and 30c in 1879 to 90, 75, 65, 50, 40 and 35c in 1887, the present rates, and from St. Louis to New Orleans decreased from 100, 80, 65, 45, 40 and 40c in 1880 to 90, 75, 65, 50, 40 and 35c in 1887, the present rate. Prior to 1885 the river made the rates to New Orleans, the rail lines charging the river rate with the river insurance, about three-fifths of 1 per cent of the value added. The river carried the bulk of the traffic to New Orleans until about 1898. No boat lines have oper-

ated to New Orleans for several years, the rate facilities afforded by the rail lines having eventually attracted nearly all long-distance traffic between Ohio, upper Mississippi and Missouri river points and New Orleans. The water competition is, however, though no longer active, still potential, and very slight reductions in rates would restore to boat lines the traffic which they have lost. Maintenance of water service via the Mississippi, Mississippi Sound and the Gulf has brought about a relation of rates and much of the time a parity between rates to Mobile and New Orleans. Thus, for various dates from 1879 to 1888, first class rates from Louisville to Mobile were $1.05, $1.00, 75c, 73c, 92c and 90c, and to New Orleans $1.05, $1.07, $1.00, 98c, 75c, 90c and 90c. The 1888 rates are still in effect. Parity of rates also exists as to the other Ohio River crossings, St. Louis, and Chicago. Mobile's importance as a port cannot be maintained without inland proportions of import and export rates substantially the same as those enjoyed by New Orleans; Mobile has access to the Alabama River and other tributaries, which have assisted in making Mobile a center for distribution to a large territory in Alabama and Mississippi. It competed with New Orleans through a portion of this territory. Its position as southern terminus of the M. & O. R. R. has led that line to maintain to Mobile the same rates from the principal western points that are maintained by its competitors to New Orleans. Rates from New York to Mobile and all-rail, water-and-rail, or all-water, are 5c, 5c, 4c 4c, 3c and 3c higher on classes 1 to 6 than rates to New Orleans. Carriers can successfully maintain rates to Mobile but little higher than to New Orleans. Pensacola, population 22,962, 105 miles from Mobile by rail, is served by L. & N. R. R., the P., St. A. & G. S. S. Co., and by various steamship lines furnishing service between Pensacola and foreign ports. Rates from Chicago, St. Louis, Louisville and Cincinnati have been on a parity with the rates to Mobile since 1887, while rates from Cairo are 12c, 9c, 7c, 6c, 5c and 4c higher. During 1911 Pensacola exported goods of the value of $20,448,770, of which $1,720,323 probably came from Ohio River cities and points beyond, and it is evident her importance as a port cannot be maintained without inland proportions of export and import rates substantially the same as those enjoyed by Mobile and New Orleans. Both Mobile and Pensacola are important commercial centers on the Gulf Coast in close proximity, can be reached by water from New Orleans at substantially the same rates, have fine deep-water harbors, compete for import, export and coastwise trade, and are served by rival railroad lines competing for such trade. Tampa is served by the A. C. L., S. A. L. and T. N. R. Rs. and M. S. S. Co., furnishing weekly service between Tampa, Mobile, Key West and New York; the S. S. S. Co. furnishing weekly service between Tampa and Philadelphia, Charleston, Jacksonville and Key West, and the P. S. S. Co. furnishing weekly service between Tampa and New Orleans. Rates to Tampa from Louisville and Cincinnati are the same, namely: $1.45, $1.23, $1.09, $1.02, 86c and 73c. Competition with rail and ocean carriers operating via New Orleans, Mobile, New York and Philadelphia to Tampa prevents any substantial increase in these rates by the rail lines. Rates from Cairo to Mobile and New Orleans, 502 and 566 miles, are less than local distance rates on any of the petitioning railways for 250 miles. Rates from Cairo to Pensacola are less than average rates for one-line hauls of 300 miles in this territory, as are also rates from Louisville and St. Louis to New Orleans, Mobile and Pensacola for from 650 to 800 miles, and from Cincinnati to the same points for distances of from 768 to 923 miles. Rates from Chicago to New Orleans, Mobile and Pensacola, from distances of from 866 to 920 miles, are less than average rates for one-line hauls of 400 miles to non-competitive points in this territory, and those from Louisville and Cincinnati to Tampa correspond to the rates over two-line hauls of 750 miles. Atlanta, Birmingham and Montgomery are the most important interior points in southeastern territory. Distances to Atlanta from both Louisville and Cincinnati are less than 500 miles, and the rates from both cities are 98c, 87c, 78c, 63c, 52c and 41c; rates in excess of those to the Gulf ports for distances 50 to 80 per cent greater. From Louisville to Birmingham, 394 miles, via the L. & N., the rates are 79c, 69c, 58c, 48c, 40c and 30c; higher than those from Cairo to Mobile and New Orleans for a distance 25 to 40 per cent greater. From Cincinnati to Birmingham, via the L. & N., 508 miles, rates are 89c, 79c, 68c, 55c, 47c and 36c; higher than rates Louisville or St. Louis

to New Orleans, Mobile and Pensacola for distances of from 654 to 809 miles. From Louisville to Montgomery, 491 miles, rates are 98c, 87c, 78c, 62c, 50c and 41c, exceeding rates Cincinnati to New Orleans, Mobile and Pensacola for from 768 to 923 miles. From Cincinnati to Montgomery, 605 miles, rates are $1.08, 97c, 88c, 70c, 57c and 47c in excess of rates Chicago to New Orleans, Mobile and Pensacola for from 866 to 920 miles. The lowest commodity rate from Cairo to New Orleans is $2 per ton on brick, yielding 3.5 mills per ton mile for 566 miles; the lowest from St. Louis to New Orleans is $2.50 per ton on cement, yielding 3.5 mills per ton-mile; the lowest from Chicago to Mobile is $3.50 per ton on cement, yielding 4 mills per ton-mile; the lowest from Cincinnati to New Orleans is 22c on class D, yielding 4.7 mills per ton-mile. On the I. C. R. R. from Cairo to New Orleans, south of Jackson, the highest rated points are Roseland to La Branch, La., the rates to these stations being 95c, 76c, 63c, 53c, 46c and 41c. To Roseland, 495 miles from Cairo, the rates are below the average of rates for 300 miles, to non-competitive points in this territory. From Cairo to Mobile, via the M. & O. R. R., south of Meridian, rates reach a maximum at Deer Park, Ala., being $1.16, 98c, 84c, 68c, 56c and 48c for 458 miles, as compared with average rates of $1.15, 98c, 80c, 69c, 59c and 51c for one-line hauls of 450 miles. On the route from Cairo and Pensacola, via the M. & O. and the L. & N. R. Rs., the maximum rate point is Atmore, Ala., 547 miles from Cairo, the rates being $1.15, 94c, 80c, 69c, 64c and 55c, as compared with average two-line haul rates of $1.28, $1.12, 99c, 83c, 69c and 56c for 550 miles. South of Montgomery, on the route Louisville to Mobile, the maximum-rate points are Dunham to Brock, Ala., taking approximately blanket rates of $1.13, 92c, 78c, 67c, 62c and 58c. This blanket is 50 miles wide, centering 600 miles from Louisville. Average rates on one-line hauls of 600 miles are $1.18, $1.02, 86c, 74c, 63c and 53c. On the route from Louisville to New Orleans, midway between Mobile and New Orleans, is Gulfport, Miss., rates to which from Louisville are the same as the New Orleans and Mobile rate. The high-rate points between Mobile and New Orleans are Scranton, Miss., and Dunbar, La. The former is half way between Mobile and Gulfport and the latter half-way between Gulfport and New Orleans. From Louisville to Scranton the rates are $1.19, $1.00, 79c, 69c, 58c and 52c for 770 miles. On the route of the L. & N. R. R. to Pensacola the highest rated intermediate point is Flomaton, 610 miles from Louisville, to which the rates are $1.13, 92c, 78c, 68c, 62c and 56c, considerably below the average rates for like distances to non-competitive points. On the route from Louisville to Tampa the highest rated point south of Jacksonville is Brandon, Fla., 11 miles north of Tampa and 1,188 miles from Louisville. Rates to Brandon are $1.73, $1.49, $1.37, $1.24, $1.03 and 87c. Light traffic on this line necessitates high rates. On the route from Cincinnati to Mobile, south of Montgomery, the highest rated points are Elwy and Brock, Ala., taking rates of $1.20, 98c, 88c, 71c, 66c and 62c for distances approximately 725 miles, and on the route from Cincinnati to New Orleans, the maximum rate points are Pascagoula, Miss., and Dunbar, La., 824 and 887 miles from Cincinnati, rates to which are $1.27, $1.06, 82c, 73c, 62c and 56c. On the route from St. Louis to New Orleans the highest rated points south of Jackson stations are Amite to Manchac, La., to which the rates are $1.29, $1.05, 87c, 71c, 59c and 52c; 650 miles. On the route from St. Louis to Mobile, the maximum rate point south of Meridian occurs at Yellow Pine, Ala., to which the rates are $1.26, $1.09, 98c, 78c, 64c and 56c for 598 miles, rated considerably in excess of average rates for like distances in this territory. On the route from St. Louis to Pensacola, the highest point east of Mobile is Canoe, to which the rates are $1.26, $1.06, 93c, 75c, 65c and 58c for 708 miles. On the route from Chicago to New Orleans the maximum rate points south of Jackson are stations Roseland to Manchac, La., to which rates are $1.40, $1.13, 95c, 78c, 65c and 57c for 858 miles. South of Meridian on the route from Chicago to Mobile rates reach a maximum at Yellow Pine, Ala., $1.55, $1.29, $1.08, 86c, 71c and 62c for 806 miles, and on the route from Chicago to Pensacola maximum rate points occur at stations Garland to Castleberry, Ala., $1.50, $1.24, $1.02, 84c, 77c and 70c for 816 miles. HELD, that petitioners may continue class and commodity rates from Cincinnati, O., Louisville, Ky., Cairo, Ill., St. Louis, Mo., and Chicago, Ill., to New Orleans, La., Mobile, Ala., Pensacola, Fla., Gulfport, Miss., and Tampa, Fla., and

points contiguous, which are lower than rates applied on like traffic to intermediate points, provided (1) that on designated routes from Cairo to New Orleans, Mobile and Pensacola, rates to stations between Jackson and New Orleans. Meridian and Mobile and Mobile and Pensacola, affected by combination on one of above-mentioned points, shall not exceed such combination and rates to stations not affected are not increased; (2) that on designated routes, Louisville to New Orleans, Mobile, Pensacola and Tampa, rates to stations between Montgomery and Pensacola, Montgomery and Mobile, Mobile and New Orleans, and Jacksonville and Tampa shall not exceed the combination to one of those points, and rates to stations not so affected shall not be increased; (3) the same rule to apply on the routes from St. Louis to New Orleans, and Pensacola, as to stations between Mobile and Pensacola; (4) by Oct. 1, 1914, on the route St. Louis to Mobile, rates to stations between Meridian and Mobile to be so corrected as not to exceed rates for one-line hauls for similar distances; (5) on the routes from Cincinnati to Gulf ports, rates to stations between Montgomery and Pensacola, Montgomery and Mobile, Mobile and New Orleans and Jacksonville and Tampa affected by combination on one of such points shall not exceed such combination and rates to stations not affected shall not be increased, and (6) that on the routes from Chicago to New Orleans, Mobile and Pensacola, rates to stations between Jackson and New Orleans, Meridian and Mobile and Montgomery and Pensacola shall not exceed the combinations on such points and the rates to stations not so affected shall not be increased. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 214.

(i) **S. E. Case F. Rates from Ohio River crossings, St. Louis, Mo., and Chicago, Ill., to Memphis, Tenn., Greenville, Vicksburg and Natchez, Miss.** Cairo, Louisville and Cincinnati are selected as representative Ohio River crossings, and the following routes considered: (1) Cairo to Memphis via I. C. R. R., 170 miles, rates to Memphis not being exceeded north of Obion, Tenn.; (2) Cairo to Greenville, Miss., via I. C. C. R. R. to Memphis and Y. & M. V. R. R. to Greenville, 320 miles; (3) Cairo to Vicksburg, 390 miles, the route being the same as the preceding up to Coahoma, Miss.; (4) Cairo to Natchez via I. C. R. R. to Memphis and Y. & M. V. R. R. to Natchez, 467 miles, rates to stations intermediate to Vicksburg being the same as under routes 2 and 3; (5) Louisville to Memphis via I. C. R. R., 391 miles, rates to Memphis not being exceeded north of Boaz, Ky., 155 miles northeast of Memphis; (6) Louisville to Greenville via I. C. R. R. to Memphis and Y. & M. V. R. R. to Greenville, 541 miles, rates to I. C. R. R. stations east of Memphis being the same as under route 5; Louisville to Vicksburg via I. C. R. R. to Memphis and Y. & M. V. R. R. to Vicksburg, 611 miles, rates to stations north of Coahoma, Miss., being the same as under routes to Memphis and Greenville; (8) Louisville to Natchez via I. C. R. R. to Memphis and Y. & M. V. R. R. to Natchez, 688 miles, rates to stations north of Vicksburg being the same as under route 7; (9) St. Louis to Memphis via I. C. R. R., 322 miles, rates to stations north of Clinton, Ky., not exceeding those to Memphis; (10) St. Louis to Greenville via I. C. R. R. to Memphis and Y. & M. V. R. R. to Greenville, 472 miles, rates to stations south of Memphis being the same as for route 6; (11) St. Louis to Vicksburg via I. C. R. R. to Memphis and Y. & M. V. R. R. to Vicksburg, 542 miles, rates to stations south of Memphis being the same as apply from Louisville under route 7; (12) St. Louis to Natchez via I. C. R. R. to Memphis and Y. & M. V. R. R. to Natchez, 619 miles, rates to stations south of Vicksburg being the same as from Louisville under route 8; (13) Chicago to Memphis via I. C. R. R., 534 miles, rates to stations north of Crutchfield, Ky., not exceeding rates to Memphis; (14) Chicago to Greenville via I. C. R. R. to Memphis and Y. & M. V. R. R. to Greenville, 684 miles, rates to stations north of Memphis being the same as under route 13; (15) Chicago to Vicksburg via I. C. R. R. to Memphis and Y. & M. V. R. R. to Vicksburg, 754 miles, rates to Coahoma, Miss., and points north, being the same as on route to Greenville; (16) Chicago to Natchez, via I. C. R. R. to Memphis and Y. & M. V. R. R. to Natchez, 831 miles, rates to Vicksburg and points north being as in route 15; (17) Cincinnati to Memphis via L. & N. R. R., 494 miles, rates to points north of Upton, Ky., not exceeding rates to Memphi , (18) Cincinnati to Greenville, via L. & N. R. R. to Memphis and Y. & M. V. R. R. to Greenville, 644

miles, rates to points north of Memphis being as in route 17; (19) Cincinnati to Vicksburg via L. & N. R. R. to Memphis and Y. & M. V. R. R. to Vicksburg, 714 miles, rates to stations north of Cohoma being as in route 18; (20) Cincinnati to Natchez via L. & N. R. R. to Natchez, 791 miles, rates to stations north of Vicksburg being as in route 19. DEFENSE. Carriers sought to justify maintenance of lower rates from points of origin to Memphis, Greenville, Vicksburg and Natchez, then to intermediate points on the grounds: (1) that rates to the four Mississippi River crossings are necessitated by river competition, actual or potential, on the Mississippi and Ohio rivers; (2) that these rates to Mississippi River crossings are subnormal, but (3) that they pay more than the additional cost of handling, and (4) that rates to the intermediate points are not unreasonable. Rates from the five points of origin to Greenville, Vicksburg and Natchez are the same as to New Orleans, and the water competition which has necessitated rates to New Orleans has prevented the maintenance of higher rates to the other crossings. There is water competition between Memphis and the Ohio River crossings and St. Louis, the Lee line furnishing regular semi-weekly service between Cairo, St. Louis and Memphis, and semi-monthly between Cincinnati, Louisville and Memphis. Rates from Louisville to Memphis via the water line are 53c, 41c, 38c, 30c, 24c, 23c, 20c, 15c, 12c and 10c for the ten numbered and lettered classes, and by the rail lines, 65c, 50c, 45c, 35c, 30c, 15c, 26c, 15c, 12c and 20c. The present water-line rates have been in force since 1887, and a considerable tonnage moves to Memphis from St. Louis and Ohio River cities under them. From Cincinnati to Atlanta, Ga., and Birmingham and Montgomery, Ala., the first-class rates are, respectively, 98c, 89c and $1.08 for distances of 475, 508 and 605 miles, and from Louisville to the same points rates are 98c, 79c and 98c for distances of 451, 394 and 491 miles. These rates are considerably in excess of rates to the Mississippi River crossings. None of the commodity rates from any of the points of origin to these crossings yields less than 3 mills per ton mile, and very few less than 4 mills. Rates from Cairo, St. Louis and Chicago to the three highest rated points on the routes in question, Lula, Anguilla and Russum, Miss., are usually made by adding the rate up to Memphis to the local rate from Memphis to destination. Rates on the Y. & M. V. R. R., particularly in the first three classes, are considerably in excess of average rates over one-line haul for like distances in the Southeast. Rates from Cincinnati to these three high-rate points are over two-line hauls and do not materially exceed average rates over two-line hauls for like distances. HELD, that petitioners may continue class and commodity rates, Cairo, Louisville, Cincinnati; St. Louis and Chicago to Memphis, Greenville, Vicksburg and Natchez, and points contiguous, lower than rates to intermediate points, provided (1) that on routes from all named points of origin to Memphis rates to points affected by combination on Memphis shall not exceed such combination and rates to intermediate points not so affected shall not be increased; (2) that on the routes from Cincinnati to Vicksburg, Greenville and Natchez, rates to stations affected by combination on one of such points shall not exceed such combination and rates to intermediate stations not so affected shall not be increased, and (3) that on the routes from Cairo, Louisville, St. Louis and Chicago to Greenville, Vicksburg and Natchez rates to stations affected by combination on such points of destination shall not exceed such combination, and by Oct. 1, 1914, rates to intermediate stations not so affected be corrected so as not to exceed rates over one-line hauls for like distances. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 241.

(j) **S. E. Case G. Rates from New York City to Points on Navigable Rivers.** New York is selected as representative of Eastern cities, and Augusta on the Savannah River, Memphis on the Mississippi, Macon, Milledgeville, Hawkinsville and Dublin on the Oconee and Ocmulgee, Columbus and Eufaula on the Chattahoochee, Albany on the Flint, Montgomery and Selma on the Alabama and Tuscaloosa and Demopolis on the Tombigbee as representative southern points located on navigable rivers. In stating the rates from New York the water-and-rail rates are taken in describing the routes to points on the Savannah, Oconee, Ocmulgee, Chattahoochee, Flint, Alabama and Tombigbee rivers, and the all-rail rates may be found by adding the following differences: 12c, 10c, 9c, 8c, 6c, 5c; to Memphis and intermediate stations the

water-and-rail and all-rail rates are the same. The following routes are chosen for discussion: (1) New York to Augusta, Ga., via O. S. S. Co. of S. to Savannah and C. of G. R. R. to Augusta, 382 constructive miles, obtained by adding 250 miles to the rail mileage, rates to Augusta not being exceeded at stations east of Pineora, Ga.; (2) New York to Memphis, Tenn., via P. R. R. to Potomac Yards, Va., S. Ry. to Lynchburg, Va., N. & W. Ry. to Bristol, Tenn., and S. Ry. to Memphis, 1,160 miles; (3) New York to Macon, Milledgeville, Hawkinsville and Dublin, Ga., via O. S. S. Co. of S. to Savannah, C. of G. Ry. to Macon, 441 constructive miles; C. of G. to Dublin, 393 constructive miles; C. of G. to Hawkinsville, constructive mileage 434. Rates to Macon are the rates to Milledgeville, Hawkinsville and Dublin; (4) New York to Columbus and Albany, Ga., and Eufaula, Ala., via O. S. S. Co. of S. to Savannah, C. of G. Ry. to Columbus, constructive mileage 541; via A. C. L. to Albany, constructive mileage 458; via C. of G. Ry. to Eufaula, constructive mileage 585, rates to stations east of Macon being as under route 3 and rates to Albany and Eufaula being the same as to Columbus; (5) New York to Montgomery and Selma, Ala., via O. S. S. Co. of S. to Savannah, S. A. L. to Montgomery, constructive mileage 588, S. A. L. and W. Ry. of A. to Selma, constructive mileage 638, rates to points on the S. A. L. east of Lanier, Ga., not exceeding rates to Montgomery, and rates to Selma being the same as rates to Montgomery. Rates to stations between Montgomery and Selma are made by combination on either point, resulting in rates that increase westwardly from Montgomery to Whitehall, Ala., midway between Montgomery and Selma, rates to Whitehall being $1.36, $1.21, $1.08, 89c, 74c, 59c; (6) New York to Demopolis and Tuscaloosa, Ala., to Tuscaloosa, via O. D. S. S. Co. to Norfolk, S. Ry. to Birmingham, and A. G. S. R. R. to Tuscaloosa, constructive mileage 1,000, and to Demopolis via O. S. S. Co. of S. to Savannah, S. A. L. to Montgomery, W. Ry. of A. to Selma, S. Ry. to Demopolis, constructive mileage 687, rates to Tuscaloosa not being exceeded at points east of Birmingham.

DEFENSE. The carriers sought to justify lower rates to the designated destinations than to intermediate points on the grounds, (1) that the present rates to the destinations have been necessitated by water competition, actual or potential; (2) that they are subnormal, but (3) pay more than the additional cost of handling, and (4) that rates to the intermediate points are not unreasonable. Augusta—population, 41,041—is served by the A. C. L. R. R., A. S. R. R., C. of G. Ry., C. & W. C. Ry., M. & F. Nav. Co. and A. & S. S. Co. The two latter furnish a semi-weekly service between Augusta and Savannah. All-water rates are applied from New York to Augusta, ranging considerably lower than the rail-and-water rates. The Savannah River is navigable for the entire year. The boat service is regular and has continued for nearly a century. Most of the heavy commodities move into Augusta by the river, and the boat lines handle the bulk of the outgoing products, consisting largely of cotton goods, to eastern cities. Competition for trade with Charleston, Savannah, Columbia, Macon and Atlanta has influenced the carriers in according low rates to Augusta. Memphis, Tenn.—population, 131,105—is served by the C., R. I. & P., St. L. & S. F., I. C. Y. & M. V., L. & N., N. C. & St. L., St. L. I M. & S., and St. L. S. W. & S. Rys. Present rates to Memphis were established by trunk lines from the eastern seaboard through Ohio River crossings to meet water competition via New Orleans and the Mississippi River. These lines, after reaching the crossing, were in active competition with boat lines on the Ohio, Cumberland and Mississippi rivers. Adjustment resulted, and the rates of the trunk lines were built up to points beyond, not on local, but on differential, which enabled the rail lines to compete with the boat lines. In Board of Trade of Chattanooga v. E. T. V. & G. Ry. Co., 5 I. C. C. 546, rates to Memphis were the same on the first five classes as they are to-day, but 3c higher on the sixth class. The Commission then held that carriers were justified in charging less on traffic for the longer distance to Memphis by the existence of water competition of controlling force. Rates to Memphis, via steamers to New Orleans, thence by rail, were advanced in 1898 to $1.00, 85c, 65c, 45c, 38c and 32c, but these rates were canceled in 1910, so that at present there is no through rates via New Orleans, nor any regular water service between New Orleans and Memphis, such as existed when the decision referred to was rendered. But potential water competition exists. Any material ad-

vance in the rail rates from New York would re-establish active competition on the Mississippi River. Macon, Ga.—population, 40,665—is situated at the head of navigation of the Ocmulgee, a branch of the Atlanta River. Boat service was continued on the river until 1909, and arrangements are being made to resume navigation. The U. S. has expended over $600,000 in the improvements of the river system. Macon is served by the C. of G. Ry., S. Ry., Ga. R. R., G. S. & F. Ry., M. & B. Ry. and M. D. & S. R. R. The M. & B. Nav. Co. has two steamboats, one of which had been placed in commission and resumed business on the river. Railroad tonnage in and out of Macon during 1910 was 2,000,000 tons, 50 per cent of which was handled to and from the coast, one-third of which could be handled by boat. In 1884 water-and-rail rates from New York to Macon were $1.09, 96c, 83c, 70c, 59c and 48c. In 1905 these rates were reduced to $1.02, 91c, 81c, 66c, 55c and 43c. The former rates reflected the force of water competition, but existing rates were not the result of increased water competition, but were the result of reductions made to Atlanta and other points with which Macon competes as a distributing center. The reduction was made to preserve the relation of rates between Atlanta, and other points with which rates are made by combination over Macon received corresponding reductions. Reductions to Macon were 9c, 5c, 2c, 4c, 4c and 5c, and other reductions to intermediate stations between Oconee and Macon were 9c, 2c, 1c, 3c, 1c and 3c. Oconee is 45 miles east of Macon and the stations between it and Macon were the highest rated stations on the line. Thus the reductions to Macon produced little, if any, increase in discrimination against these higher rated intermediate points. The Interstate rates, New York to Macon, cannot be maintained materially higher than the sum of the water rates to Savannah added to the local rate, Savannah to Macon, either of which is within the control of petitioners. The water rates to Savannah are 57c, 47c, 37c, 29c, 24c and 19c, and the rail rates, Savannah to Macon, 63c, 56c, 48c, 40c, 34c and 28c, yielding a combination of $1.20, $1.03, 85c, 69c, 58c and 47c, as compared with water-and-rail rates, New York to Macon, of $1.02, 91c, 81c, 66c, 55c and 43c. Dublin and Milledgeville, Ga., are located on the Oconee River, a tributary of the Altamaha, and Hawkinsville is on the Ocmulgee, 30 miles south of Macon. Dublin is served by the C. of G. Ry., M. D. & S. R. R. and W. & T. R. R.; Milledgeville by the C. of G. Ry. and the Ga. R. R., and Hawkinsville by the G. L. Ry., W. & T. R. R. and the S. Ry. Macon, Milledgeville, Hawkinsville and Dublin enjoy the same rates from New York, are all upon the same river system, and enjoy approximately the same degree of water competition. Columbus—population 20,554—is located at the falls of the Chattahoochee River, a branch of the Apalachicola, by which it may be reached from the Gulf. When the Muscogee Railroad, now east of the C. of G. Ry., reached Columbus in 1852, it established rates from Savannah lower than those to intermediate points, which have continued ever since. Columbus is served by the C. of G. Ry., S. A. L., S. Ry. and the M. & P. S. Co., the latter in connection with boats on the Gulf, furnishing an all-water route to New Orleans, Mobile and Pensacola. Arrivals of boats were: In 1866, 84; 1885, 231; 1890, 203; 1895, 141, and 1899, 201. During March, 1910, boats delivered at Columbus 204,720 pounds of freight; during April, 249,235 pounds, and during May, 440,200 pounds. This came mostly from northwestern and southern points, but there is an all-water route to the East via Apalachicola. In 1884, rail-and-water rates from New York to Columbus were reduced to $1.14, 98c, 86c, 73c, 60c and 49c, and in 1905 to $1.05, 93c, 83c, 68c, 56c and 44c, the latter reduction not being made to meet water competition, but on account of changes in the rates to Atlanta and to preserve the power of Columbus as a distributing center. Rates to the higher-rated territory between Columbus and Macon, stations Reynolds to Schatulga, are blanket rates, covering a territory 50 miles wide, and are made arbitraries over Columbus rates. These arbitraries are the local rates on the C. of G. Ry. for distances of 10 miles. Reductions in the rates to Columbus were 9c, 5c, 3c, 5c, 4c and 5c, while reductions to these higher-rated intermediate points were 6c, 0, 0, 2c, 2c and 2c. Albany, Ga.—population 8,190—at the head of the navigation of the Flint River, a branch of the Apalachicola, is served by the A. C. L., C. of G., S. A. L., G. S. W. & G. and the Ga. N. Small steamboats ascend the river to Albany. The United States has

expended $278,500 in improving the river, upon which a regular boat service has been maintained for years, though the boats are of light draft and little tonnage and the traffic is light. Competition with Americus, Cordele, Dawson, Eufaula and Columbus as distributing centers accounts for the depression in rates to Albany from the East. Rates from the East to Albany have been the same as to Columbus since 1891. Eufaula, Ala., on the Chattahoochee River 50 miles south of Columbus, is a local point on the C. of G. Ry. Rates are the same as to Columbus. Whatever water competition may exist at Columbus is present at Eufaula. Montgomery, Ala., on the Alabama River, is served by the A. C. L., C. of G., L. & N., M. & O. S. and S. A. L. R. Rs. and the W. Ry of A. There is also a regular boat service on the Alabama River between Mobile and Montgomery, the rates of the boat line being fixed by the Alabama Railroad Commission at 30c, 20c, 20c, 18c, 12c and 10c. These rates added to the rates of the Mallory Line from New York to Mobile give a combination of $1.05, 85c, 74c, 62c, 50c and 43c, as compared with rail-and-water rates of $1.08, 95c, 84c, 69c, 57c and 45c. A large percentage of business moving from New York to Montgomery moves via the all-water route. Selma, Ala.—population 13,649—on the Alabama River, about 50 miles west of Montgomery, is served by the W. Ry. of A., S. Ry. and L. & N. R. R. Same rates are made all rail, water and rail, and all water to Selma as are in effect to Montgomery, and conditions are similar. Demopolis, Ala., at the junction of the Tombigbee and Warrior rivers, in western Alabama, is a local station on the S. Ry. Rates via the Tombigbee River, Mobile to Demopolis, are identical with those applicable to Montgomery and Selma. Through published rates, water and rail, via south Atlantic ports at Demopolis, exceed the rates to Montgomery and Selma, and water-and-rail rates via the Mallory line to Mobile and rail to Demopolis are $1.06, 93c, 81c, 67c, 57c and 46c. The Mallory line maintained rates to all territory on and south of the S. Ry. from Selma to Meridian 12c, 10c, 9c, 7c, 4c and 3c less than rates via the South Atlantic ports. The reason necessitating the water-and-rail rates to Demopolis is the same as in the case of Montgomery and Selma. Tuscaloosa, Ala., on the Warrior River, 75 miles north of Demopolis, is served by the M. & O., A. G. & S. and L. & N. R. Rs. Steamboats operating on the Warrior and Tombigbee rivers charge higher rates from Mobile to Tuscaloosa than to Demopolis, and rail lines Mobile to Tuscaloosa charge rates higher by 29c, 29c, 28c, 21c, 22c and 11c. Rates from New York to the points in question, together with construction water and rail mileage, are:

New York, N. Y., to—	Miles.	1	2	3	4	5	6
Memphis, Tenn.	1,160	100	85	65	45	38	32
Augusta, Ga.	382	96	81	70	56	47	37
Macon, Ga.	441	102	91	81	66	55	43
Columbus, Ga.	541	105	93	83	68	56	44
Montgomery, Ala.	588	108	95	84	69	57	45
Demopolis, Ala.	687	118	103	90	74	61	49
Tuscola, Ala.	1,000	138	120	102	83	70	58

These rates are in all instances materially lower than average rates made over like distances to non-competitive points in the same territory, though they do not compare favorably with rates to south Atlantic and Gulf ports. No rates to any of these points appear to yield less than the probable additional cost of handling. HELD, that petitioners may continue class and commodity rates from New York to Augusta, Ga., Memphis, Tenn., Macon, Milledgeville, Hawkinsonville, Dublin and Columbus, Ga.; Eufaula, Montgomery, Selma, Demopolis and Tuscaloosa, Ala., lower than rates to intermediate stations. Present rates to Macon, Milledgeville and Hawkinsonville, Dublin and Columbus found unduly preferential. Authority to continue lower rates from New York to Albany, Ga., than to intermediate points denied. Rates from New York to stations on the C. of G. Ry. between Savannah and Augusta, and east of Macon, on the S. A. L. Ry., between Cordele and Montgomery, found unduly discriminatory. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 254.

(k) **S. E. Case H. Rates from New Orleans, La., to Points on Navigable Rivers.** The points on navigable rivers selected for consideration are: Augusta, Macon, Columbus and Albany, Ga., and Mont-

gomery and Selma, Ala., and the routes selected are as follows: (1) New Orleans to Augusta, via L. & N. R. R. to Montgomery, W. Ry. of A. and A. & W. P. Ry. to Atlanta, and Ga. R. R. to Augusta, 664 miles; (2) New Orleans to Macon, via L. & N. R. R. to Montgomery and C. of G. Ry. to Macon, 542 miles; (3) New Orleans to Columbus, via L. & N. R. R. to Montgomery and C. of G. Ry. to Columbus, 442 miles; (4) New Orleans to Albany, Ga., via L. & N. R. R., to Montgomery & C. of G. Ry. to Albany, 482 miles; (5) New Orleans to Selma, via L. & N. R. R., 31 miles. DEFENSE. Carriers sought to justify lower rates to points of destination in question than to intermediate points on the grounds: (1) that rates to these six points had been depressed by water, rail or market competition, or by all three; (2) that such rates were subnormal, but (3) that they pay more than the additional cost of handling, and (4) that rates to intermediate points are not unreasonable. First-class rates to Augusta from (1) New York, (2) New Orleans, Vicksburg and Memphis, and (3) Cincinnati; Louisville, Evansville, Paducah and Cairo, are, respectively, 96c, 99c and $1.03. This relation of rates from the Ohio and Mississippi River crossings exists as to nearly all points in Georgia within the Atlanta Sub territory. The reasons mainly influential in depressing rates from New Orleans to Augusta are: (1) desire of carriers serving Augusta to preserve its distributing area against Savannah, Charleston, Macon, Atlanta and Athens, and (2) their desire to transport articles from western markets to Augusta, which came into competition there with similar articles from eastern cities. The 1887 rates, New Orleans to Augusta, of $1.03, 88c, 77c, 64c, 52c and 42c were continued until 1905, when they were reduced to present levels. There is no all-water service from New Orleans to Augusta. Articles from New Orleans taking fourth, fifth and sixth class rates can be distributed by Augusta on an equality of rates to a little more than half the distance toward Savannah or Charleston, a little less than half the distance toward Atlanta, and points midway between Augusta and Atlanta have their distributing area on the west limited by the territory tributary to Atlanta. As between New Orleans and the Ohio River crossings, the policy of meeting the market competition from these distributing centers has been affected alike to competitive and local stations. First class rates from New York and New Orleans to Augusta, Social Circle, Buckhead, Crawfordville and Lithonia, Ga., are, respectively, 96c, $1.27, $1.35, $1.38, and $1.31, and 99c, $1.16, $1.24, $1.32 and $1.29, demonstrating that petitioners have more nearly met competition from New York at the intermediate stations than they have done at Augusta. Conditions alleged to have brought about depression of rates from New Orleans to Macon are similar to those at Augusta, and competition of eastern markets of supply has been met at Macon as at Augusta, but not with the same consistency. Rates to Macon from Ohio River crossings are in every case nearly the same as from New York, while those from Mississippi River crossings are usually 4c less. Rates to intermediate points are, however, from both New Orleans and the Ohio River cities, often materially higher than New York rates. There is a regular all-water service on the Chattahoochee and Apalachicola rivers between Columbus and Apalachicola, and some freight moves by water from New Orleans to Columbus, but the present level of rates to Columbus is not due to water competition, for when rates to Atlanta were reduced in 1905, rates to Columbus were correspondingly reduced. They were deducted by competition of markets of distribution and competition of carriers serving other markets of supply. The line from New Orleans to Columbus is 442 miles, and the constructive mileage from New York is 541 miles. Rates from New Orleans are 6c, 6c, 7c, 6c and 5c less than the rates from New York, while rates to Guerryton, Ala., an intermediate point, are, from New York, $1.30, $1.11, 98c, 83c, 69c and 56c, and from New Orleans, $1.39, $1.19, $1.04 83c, 68c and 54c. Guerryton is the high-rate point on the route from New Orleans, and one of the high-rate points on the route from New York. Thus, competition of routes from eastern cities met at Columbus has not been met at stations intermediate to Columbus and New Orleans. Such water competition as exists at Albany does not exercise a controlling influence on rates, and the primary reason for depression of rates from New Orleans to Albany is competition of other distributing centers. In 1896 rates of 89c, 79c, 68c, 55c, 47c and 36c were established on shipments

from New Orleans to Montgomery and Selma, Ala., and in 1910, as a result of an order of the Commission in New Orleans Board of Trade v. L. & N. R. R. Co., 17 I. C. C. 231. There is considerable movement of freight, particularly grain, grain products and general merchandise, to Montgomery and Selma by boats on the Alabama River, but the present level of rates was not induced by water competition, but by the order of the Commission. The first-class rates from New Orleans to Augusta, Macon, Columus, Albany, Montgomery and Selma are, respectively, 99c, 99c, 99c, $1.19, 89c and 89c for distances of 664, 542, 442, 482, 318 and 311 miles. Rates to Augusta, Macon and Columbus are lower than average rates for like distances to non-competitive points in this territory, while rates to Albany correspond to average rates for like distances over two-line hauls to non-competitive points, and rates to Montgomery and Selma are less than average rates for like distances over one-line hauls. None of the rates on either classes or commodities appeared to pay less than the additional cost of handling. On the Augusta route, rates to points between Montgomery and Atlanta are discussed in subdivision K. Rates to stations on the Ga. R. R., between Atlanta and Augusta, reach a maximum at Buckhead, Ga., 589 miles from New Orleans, being $1.32, $1.16, $1.04, 85c, 69c and 59c, being approximately the rates made over two-line hauls for like distances. On the route to Macon rates to stations on the C. of G. Ry., between Columbus and Macon, reach a maximum at Butler, Ga., 492 miles from New Orleans, being $1.37, $1.20, $1.08, 89c, 73c and 55c, rates considerably in excess of average rates for distances of 500 miles, viz., $1.20, $1.04, 92c, 86c, 64c and 52c. On the route to Columbus the high-rate point is Guerryton, Ala., 363 miles from New Orleans, the rates to which are $1.39, $1.19, $1.04, 83c, 68c and 54c; rates materially exceeding the average rates in this territory over two-line hauls for like distances. Rates from New Orleans to Albany are but very little below the average rates made over two-line hauls for like distances in this territory. HELD, that carriers may continue rates from New Orleans to Augusta lower than to intermediate points. Present rates, New Orleans to Macon, Columbus, Montgomery, Selma and Albany, held unduly preferential, and authority to continue lower rates to such points than to intermediate points denied. Fourth Section Violations in the Southeast. 30 I. C. C. 153. 274.

(1) **S. E. Case I. Rates from Cincinnati, O., and Louisville, Ky., to Points on Navigable Rivers.** The routes considered were as follows: (1) Cincinnati to Augusta, via C., N. O. & T. P. Ry. to Harriman Junction, Tenn., S. Ry. to Spartanburg, S. C., and C. & W. C. Ry. to Augusta, 642 miles, rates to all stations on the C. & W. C. Ry., Spartanburg to first station north of Augusta, being blanketed at $1.16, $1.07, 86c, 67c, 55c and 50c, and the rates to Augusta being $1.03, 90c, 81c, 65c, 54c and 43c; (2) Louisville to Augusta, via L. & N. R. R. to Nashville, and N. C. & St. L. to Atlanta, and Ga. Ry. to Augusta, 650 miles; (3) Louisville to Macon, via L. & N. R. R. to Birmingham, and C. of G. Ry. to Macon, 647 miles; (4) Cincinnati to Macon, via C., N. O. & T. P. to Chattanooga, and S. Ry. through Rome and Atlanta to Macon, 580 miles; (5) Cincinnati to Columbus, via C., N. O. & T. P. Ry. to Chattanooga, and S. Ry. through Rome, Atlanta and McDonough to Columbus, 618 miles; (6) Louisville to Columbus, via C., N. C. & T. P. Ry. to Chattanooga, and S. Ry. through Rome, Atlanta and McDonough to Columbus, 618 miles; (6) Louisville to Columbus, via L. & N. R. R. to Birmingham, and C. of G. Ry. to Columbus, 547 miles; (7) Cincinnati to Albany, Ga., via C., N. O. & T. P. Ry. to Chattanooga, S. Ry. to Macon, G. S. & F. Ry. to Cordele, Ga., and G. S. W. & G. R. R. to Albany, 680 miles; (8) Louisville to Albany, via L. & N. R. R. to Montgomery and S. A. L. Ry. to Albany, 650 miles; (9) Cincinnati to Montgomery, via C., N. O. & T. P. Ry. to Chattanooga, S. Ry. to Atlanta and A. & W. P. R. R. and W. Ry. of A. to Montgomery, 667 miles; (10) Louisville to Montgomery, via L. & N. R. R., 491 miles; (11) Cincinnati to Selma, via C., N. O. & T. P. Ry. to Chattanooga, A. G. S. R. R. to Birmingham, and S. Ry. to Selma, 590 miles; (12) Louisville to Selma, via L. & N. R. R. to Montgomery, and W. Ry. of A. to Selma, 541 miles; (13) Cincinnati to Chattanooga, via C., N. O. & T. P. Ry., 338 miles; (14) Louisville to Chattanooga, via L. & N. R. R. to Nashville, and N., C. & St. L. Ry. to Chattanooga, 337 miles. DEFENSE. Carriers sought to justify lower rates from

Cincinnati and Louisville to Augusta, Macon, Columbus, Albany, Montgomery, Selma and Chattanooga than are applied to like traffic to intermediate points upon the grounds: (1) that rates to each of the river points had been depressed through water competition, rail competition, competition of markets of distribution and competition of markets of supply; (2) that such rates are subnormal, but (3) that they pay more than the additional cost of handling, and (4) that rates to the intermediate points are not unreasonable. Augusta, Ga., 642 miles from Cincinnati and 650 miles from Louisville, takes the same rates from both points. While it does not appear that the all-water route from these points to Augusta, via the Ohio and Mississippi rivers, Gulf, Atlantic Ocean and Savannah River is utilized, it appears that trunk lines operating through north Atlantic ports and by ocean steamers furnish a rail-and-water service in Augusta that materially affects rates to that point. Rates from various points north of the Ohio River on a number of representative commodities, including starch and telephone and telegraph cable from Chicago, woven wire fencing, certain steel and iron articles from Pittsburgh, Pa., and Youngstown, O., and dried beans from Michigan, are lower by north Atlantic ports and ocean to Savannah or Charleston, thence by rail to Augusta, than by the all-rail route in question. A material and increasing amount of freight from Ohio River cities and points north now moves by north Atlantic ports and ocean, and any material increase in rates would divert to other routes a large percentage of the traffic. Competition with Savannah, Macon, Charleston, Athens, and Atlanta and competition of carriers serving eastern markets of supply have assisted in depressing rates to Augusta. Low rates from New York have been still further reduced by the necessity of meeting water competition. Western carriers, in meeting this low level of rates, have met competition not only at Augusta, but at all intermediate points. Rates from Louisville and Cincinnati to Macon have been induced by rates made over rail-and-water routes through North Atlantic ports, by competition of carriers serving other distributing markets and by competition of carriers serving Macon from eastern cities. Rates from New York to Macon are practically the same as from the Ohio River, but to stations between Macon and Columbus rates from New York are considerably lower than rates from the Ohio River. Thus, to Paschal, Ga., New York rates are $1.25, 111c, 98c, 81c, 67c, and 54c, and Louisville rates are $1.36, $1.19, $1.07, 89c, 73c, and 58c. From Cincinnati to Macon rates to intermediate points between Atlanta and Macon are practically identical with those from the east, except at McDonough, Ga., to which New York rates are $1.14, 98c, 86c, 73c, 60c, and 49c, and Cincinnati rates are $1.28, $1.13, $1.02, 84c, 70c and 55c. Rates from New York to McDonough are the rates which prior to 1905 were applied to Atlanta and many other points in Georgia, the reductions in 1905 to Atlanta not being made to McDonough. Rates from Louisville to Cincinnati and to Columbus have been influenced by water routes via the Ohio and Mississippi rivers, the Gulf, and Apalachicola and Chattahooche rivers, and have been brought to present level by water competition, competition of markets of distributions, and competition of eastern carriers. There is active boat service from Apalachicola to Columbus, moving freight originating at Gulf coast and Mississippi River points north to Chicago. Rates from New York to Columbus are $1.05, 93c, 83c, 68c, 56c and 44c, as compared with Louisville rates of $1.03, 90c, 81c, 65c, 54c and 43c. Rates to points intermediate Birmingham and Columbus in most instances correspond with the rates to corresponding points from New York. Rates from Cincinnati are higher than those from New York by 8c, 7c, 8c, 5c, 5c, 5c, but Cincinnati rates to points intermediate Atlanta and Columbus do not exceed those from New York. At Albany, Ga., water competition is in no sense controlling, and the present level of rates has been brought about by competition of eastern carriers and of near-by distributing centers. Rates from Ohio River crossings to Montgomery and Selma, Ala., have been depressed through combined influence of water, rail and market competition, but the primary cause is water competition on the Alabama River, low rates from the Ohio River to Mobile and river rates thence, producing totals that cannot be greatly exceeded by the all-rail lines. Class rates to Montgomery and Selma are slightly below the water rates. There are 350 commodity rates from St. Louis and the Ohio River to

these points, 10 per cent of which exceed the rail-and-water rates via Mobile. Chattanooga, population 44,604, on the Tennessee River 337 miles southeast of Louisville, 151 miles south of Nashville, and 313 miles east of Memphis, is served by the A. G. S. R. R., C. of G. Ry., C. N. O. & T. P. Ry., N. C. & St. L. Ry., S. Ry., T. A. & G. R. R., and W. & A. R. R. Rates from Cincinnati and Louisville to Chattanooga, as established by order of the Commission in Receivers' and Shippers' Asso. of Cincinnati v. C. N. O. & T. P. Ry., 18 I. C. C., 440, are 70c, 60c, 53c, 44c, 38c and 29c. Rates from Louisville are the same as from Cincinnati, being depressed in order to preserve the parity of rates between Louisville and Cincinnati. Rates from Louisville and Cincinnati to each of the Southeastern river points in question were.

From—	Miles.	1	2	3	4	5	6
Cincinnati to Augusta	642	103	90	81	65	54	43
Louisville to Augusta	650	103	90	81	65	54	43
Cincinnati to Macon	580	103	90	81	65	54	43
Louisville to Macon	647	103	90	81	65	54	43
Cincinnati to Columbus	618	113	100	91	73	61	49
Louisville to Columbus	547	103	90	81	65	54	43
Cincinnati to Albany	680	123	107	96	78	65	52
Louisville to Albany	650	123	107	96	78	65	52
Cincinnati to Montgomery	667	108	97	88	70	57	47
Louisville to Montgomery	491	98	87	78	62	50	41
Cincinnati to Selma	590	108	97	88	70	57	47
Louisville to Selma	541	98	87	78	62	50	41
Cincinnati to Chattanooga	338	70	60	53	44	38	29
Louisville to Chattanooga	337	70	60	53	44	38	29

Rates from Louisville to Augusta, Macon and Columbus, and from Cincinnati to Augusta and Macon, are practically equal to average rates to noncompetitive points over distances of 350 miles; those from Cincinnati to Columbus to average rates for 2-line hauls of 425 miles; those from Cincinnati and Louisville to Albany to average rates over 2-line hauls of 450 miles; those from Louisville to Montgomery and Selma, a little in excess of average rates over 2-line hauls of 300 miles; those from Cincinnati to Selma and Montgomery, about equal to average rates over 2-line hauls of 400 miles; rates from Louisville and Cincinnati to Chattanooga less than average rates for like distances to non-competitive points. All these rates pay more than the additional cost of handling. Rates from Cincinnati to stations on the C. & W. C. R. R. intermediate to Augusta blanketed over a territory about 200 miles in width, centering about 550 miles from Cincinnati, are $1.16, $1.07, 86c, 67c, 55c and 50c. Rates from Louisville to stations on the Ga. R. R. between Atlanta and Augusta reach a maximum at Buckhead, Ga., 554 miles from Louisville, being $1.36, $1.20, $1.08, 89c, 73c and 57c, as compared with $1.28, $1.12, 99c, 83c, 69c and 56c for 2-line hauls of 550 miles in this territory. On the route Cincinnati to Macon, south of Atlanta on the S. Ry., rates reach a maximum at Bibb, Ga., 540 miles from Cincinnati, being $1.36, $1.20, $1.09, 90c, 74c and 57c. On the route from Louisville to Macon, rates to stations between Columbus and Macon reach a maximum at Butler, Ga., 597 miles from Louisville, being $1.41, $1.24, $1.12, 93c, 77c and 59c, as compared with average rates over 2-line hauls for 600 miles of $1.31, $1.14, $1.01, 85c, 70c and 58c. The highest rates from New York to any of these intermediate stations are $1.25, $1.11, 98c, 81c, 67c and 54c. Rates from New York to Fort Valley, Ga., are $1.14, 98c, 86c, 73c, 60c and 49c. Rates from Cincinnati to stations between McDonough, Ga., and Columbus reach a maximum at Woodbury, Ga., 51 miles north of Columbus and 567 miles from Cincinnati, being $1.41, $1.24, $1.12, 93c, 77c and 59c, which exceed average rates for 2-line hauls by 13c, 12c, 13c, 10c, 8c and 3c. On the route from Cincinnati to Albany the line passes through Cordele, Ga., between Cordele and Albany rates reaching a maximum at Warwick, Ga., 23 miles north of Albany and 657 miles from Cincinnati, being $1.50, $1.31, $1.19, 96c, 82c and 66c, as compared with average rates of $1.37, $1.18, $1.06, 90c, 74c and 60c for 2-line hauls for 650 miles. But rates to Warwick are over a 4-line haul. Rates from Louisville to stations on the S. A. L., Montgomery to Albany, reach a maximum at Pittsview and Cottonton, Ala., 562 miles from Louisville, being $1.51, $1.33, $1.22, $1.02, 87c and 65c, as compared with average rates of $1.28, $1.12, 99c, 83c, 69c and 56c of

2-line hauls. Rates from Cincinnati to stations on the A. & W. P. R. R. and W. Ry. of A. between Atlanta and Montgomery, reach a maximum at La Grange and Cannonville, Ga., the rates to Cannonville, 97 miles from Montgomery and 570 miles from Cincinnati, being $1.35, $1.19, $1.07, 88c, 73c and 57c, as compared with average rates of $1.30, $1.13, $1.00, 84c, 69c and 57c for 2-line hauls for a like distance. Rates from Louisville to stations on the L. & N. R. R. north of Montgomery reach a maximum at Mountain Creek, Ala., 463 miles from Louisville. being $1.08, 88c, 69c, 64c, 59c and 55c, considerably below average rates over one-line hauls for like distances. Rates from Cincinnati to stations on the S. Ry., Birmingham to Selma, reach a maximum at Stanton, Ala., 561 miles from Cincinnati, being $1.42, $1.25, $1.12, 95c, 77c and 60c, as compared with average rates of $1.28, $1.12, 99c, 83c, 69c and 56c for 2-line hauls of 550 miles. There is a depressed rate at Mapesville, a junction point of the S. Ry. with the M. & O. R. R., 557 miles from Cincinnati, the rates being $1.21, $1.10, 96c, 86c, 74c and 55c, fairly corresponding with average rates for like distances over 2-line hauls. Rates from Louisville to points on the W. Ry. of A. between Montgomery and Selma are made by combination on one of these competitive points. The maximum rate point is Whitehall, Ala., 516 miles from Louisville, with rates of $1.26, $1.13, $1.02, 82c, 67c and 55c, fairly corresponding with average rates over 2-line hauls for like distances. On the route from Cincinnati to Chattanooga, stations Harriman Jc., Tenn., south, are blanketed with rates of 76c, 65c, 57c, 47c, 40c and 30c, found to be unreasonable on the longer haul to Chattanooga in Cincinnati Receivers' & Shippers' Asso. v. C. N. O. & T. P. R. R. Co., 18 I. C. C., 440. On the route from Louisville to Chattanooga the distance is nearly the same and rates exactly the same as to Cincinnati, but rates to intermediate points are higher than on the route from Cincinnati. The maximum point on the N. C. & St. L. Ry. is Carpenter, Tenn., 311 miles from Louisville, the rates being 88c, 78c, 68c, 58c, 51c and 44c. These rates are made over a two-line haul as compared with the one-line haul of the C. N. O. & T. P. R. R. from Cincinnati. HELD, that carriers' application to continue rates from Cincinnati and Louisville to Augusta, Macon, Columbus, Montgomery and Selma, lower than to intermediate points denied. Practice of meeting competition of eastern carriers at Macon and not at intermediate points held unduly preferential to Macon. Rates from Louisville to stations on the Ga. Ry. between Atlanta and Augusta; rates from Cincinnati to stations on the S. Ry. between McDonough, Ga., and Columbus; rates from Cincinnati to stations on the G. S. W. & G. R. R. between Cordele and Albany; rates from Cincinnati to stations on the S. A. L. Ry. between Montgomery and Albany; rates from Cincinnati to stations on the A. & W. P. R. R.; rates from Cincinnati to stations on the S. Ry. between Birmingham and Selma; rates from Cincinnati to points on the C. N. O. & T. P. R. R. north of Chattanooga, and rates from Louisville to stations on the N. C. & H. L. Ry. found unduly discriminatory. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 283.

(m) S. E. Case J. Rates from New York to Interior Basing Points; Atlanta, Ga.; Birmingham, Ala.; Athens, Cordele and Rome, Ga.; Meridian and Jackson, Miss. —The routes considered are: (1) New York to Atlanta via O. S. S. Co. of S. to Savannah, and C. of G. Ry. to Atlanta, constructive mileage 544; (2) New York to Birmingham, via Clyde Line to Charleston, S. Ry. to Augusta, Ga. R. R. to Atlanta, and S. Ry. to Birmingham, constructive mileage 729; (3) New York to Athens, via O. S. S. Co. of S. to Savannah, and C. of G. Ry. to Athens, constructive mileage 546; (4) New York to Cordele, via O. S. S. Co. of S. to Savannah, S. A. L. Ry. to Cordele, constructive mileage 418; (5) New York to Rome, via O. D. S. S. Co. to Norfolk, and S. Ry. through Atlanta to Rome, constructive mileage 580; (6) New York to Meridian, via O. D. S. S. Co. to Norfolk, S. Ry. to Birmingham, and A. G. S. R. R. to Meridian, constructive mileage 882; (7) New York to Jackson, via O. D. S. S. Co. to Norfolk, S. Ry., N. & W. Ry., A. Gt. S. R. R. and A. & V. Ry. to Jackson, 978 constructive miles; (8) New York to Jackson, via New Orleans, via M. S. S. Line and I. C. R. R. DEFENSE. Carriers sought to justify lower rates to the above interior basing points than to intermediate points on the grounds: (1) that rates to the basing points are due to competition of carriers, rival markets of production and rival markets of dis-

tribution; (2) that these rates are subnormal, but (3) pay more than the additional cost of handling, and (4) that rates to intermediate points are not unreasonable. Atlanta, population 154,839, located in Northwestern Georgia, is served by the A. & W. P. R. R., A. B. & A. R. R., C. of G. Ry., Ga. R. R., L. & N. R. R., N. C. & St. L. Ry., S. A. L. Ry., S. Ry. and W. & A. R. R. Mileage to Atlanta from various centers of distribution are: New York, 544; Cincinnati, 474; Louisville, 473; Evansville, 445; Paducah, Ky., 468; Cairo, Ill., 490; Memphis, Tenn., 419; Nashville, Tenn., 288; New Orleans, La., 493; Norfolk, Va., 616; Charleston, S. C., 309; Savannah, Ga., 294, and Brunswick, Ga., 275. First-class rates to Atlanta are: From New York, $1.05; from Baltimore, Md.; Cincinnati, Ohio; Louisville, Ky.; Evansville, Ind.; Paducah, Ky., and Cairo, Ill., 98c; from St. Louis, Mo., $1.21; and from Memphis, Tenn.; New Orleans, La., and Vicksburg, Miss., 94c. Approximately 160 special commodity rates are published from each of these points to Atlanta. In 1905 first-class rates from New York, Baltimore, Louisville and Cincinnati to Atlanta were reduced from $1.14, $1.07, $1.07 and $1.07, respectively, to $1.05, 98c and 98c, and similar reductions were made on other classes. Such reductions as were made, however, were not brought about by increase in competition of rail or water-and-rail carriers, but resulted from a compromise between the carriers on the one hand and the Georgia Railroad Commission, the Atlanta Freight Bureau and municipal authorities. The reductions of 1905 were 9c, 5c, 3c, 5c, 4c and 5c on the first six classes, and being reductions from rates already relatively low, resulted in proportional reductions in rates to Columbus, Macon, Augusta, Rome, Athens, Dalton, Cedartown, Cartersville, Cordele, Americus, and many other places, which in turn brought a considerable shrinkage in revenues of these carriers on interstate business hauled to these points. Birmingham, Ala., population 132,685, slightly north of the central portion of Alabama, is served by the A. G. S. R. R., A. B. & A. R. R., C. of G. Ry., I. C. R. R., L. & N. R. R., M & O. R. R., S. A. L. L. Ry., St. L. & S. F. R. R., and S. Ry. Mileage from the various centers is as follows: New York, 729; Cincinnati, 481; Louisville, 394; Memphis, 251; Vicksburg, 293; New Orleans, 355; Mobile, 276, and Pensacola, 260 miles. First-class rates to Birmingham are: From New York, $1.14; from Cincinnati, 89c; from Louisville, Evansville, Paducah and Cairo, 79c; from St. Louis, $1.02; from Memphis, 75c, and from New Orleans and Vicksburg, 89c. From each of the first seven points special commodity rates are published on over 200 articles, and from New Orleans and Vicksburg on over 100 articles. The different roads south of the Ohio and east of the Mississippi rivers compete actively for the carriage of freight to Birmingham. Rates made to Birmingham by western carriers from centers of production are relatively low, due partly to the desire of certain carriers to keep rates so adjusted as to permit distribution of merchandise from that point to competition with Montgomery. These low rates from the West have induced eastern carriers to depress rates to some extent. Present rates from New York exceeded rates from Cincinnati by 25c, 19c, 18c, 18c and 13c. The highest rated point between Atlanta and Birmingham is Austell, Ga., and New York rates to this point exceed those from Cincinnati and Louisville by 7c, 3c, 0c, 2c, 1c and 1c. Athens, Ga., population 14,913. is on the Oconee River, 92 miles northwest of Augusta and 73 miles northeast of Atlanta, and is served by the C. of G. Ry., Ga. R. R., S. A. L. Ry., S. Ry. and G. M. Ry. Rates to Athens from New York are $1.05; from all Ohio River crossings, $1.03; from St. Louis, Mo., $1.26, and from Memphis, Tenn., Vicksburg, Miss., and New Orleans, La., 99c. Rates from the east to Athens have long been on a parity with rates to Atlanta. Rates to Athens were reduced to their present level coincident with the 1905 reductions to Atlanta, and not by competitive influences. Cordele, situated in the south central part of Georgia, is served by the G. S. & F. Ry., G. S. W. and G. R. R., A. B. & A. R. R., and S. A. L. Ry. First-class rates to Cordele are: From New York, $1.05; from Ohio River cities, $1.23, and from New Orleans, La., $1.19. The Commission having in 1895 ordered a reduction of rates on grain and grain products from Nashville to Cordele, western carriers made a corresponding reduction from Ohio and Mississippi crossings. Reductions in rates from the east followed, and in 1905, coincident with reductions to Atlanta, rates from New York to Cor-

dele were again reduced to $1.05, 93c, 83c, 68c, 56c and 44c. Rome, Ga., population 12,099, in northwest Georgia on the Coosa River, is served by the C. of G. Ry., N. C. & St. L. Ry., S. Ry., and R. & N. R. R. First-class rates to Rome from New York, St. Louis, Mo., Ohio River crossings, Memphis, Tenn., Vicksburg, Miss., and New Orleans, La., are, respectively, $1.05, $1.21, 98c and 94c, being the Atlanta rates. Present rates were not brought about by competitive necesity, and are not now so necessitated. Meridian, Miss., population 23,000, in eastern Mississippi, is served by the A. & V. Ry. and A. G. S. R. R., M. & O. R. R., N. O. R. R., and the S. Ry. All-rail and water-and-rail rates through Norfolk or South Atlantic ports from New York are $1.14, 98c, 86c, 73c, 60c and 49c. These rates are controlled by the Morgan line through New Orleans and the Mallory line through Mobile; rates through these ports to Meridian being 18c, 14c, 11c, 8c, 6c and 4c less than the rates given above. Meridian is 136 miles north of Mobile and 196 miles northeast of New Orleans. The Mallory line and Morgan line, with their connections at Mobile and New Orleans, publish through rates from New York to Meridian, but not to points between Mobile and Meridian; rates to these points being made by the water rates, the local rates beyond and 4c wharfage, thus giving rates materially higher than to Meridian. Maintenance of present rates to Meridian via Norfolk and via south Atlantic ports is necessitated by competition of Gulf lines and of carriers serving Ohio River cities. Jackson, Miss., population 21,000, on the Pearl River, near the center of the state, is served by the A. & V. Ry., and G. & S. I. R. R., I. C. R. R., N. O. G. N. R. R., and Y. & M. V. R. R. Rates from New York to Jackson, all-rail or water and rail via Norfolk or South Atlantic ports, are $1.24, $1.09, 93c, 83c, 71c and 64c. These rates are controlled by rates made by the Morgan line and connections through New Orleans. The latter are not made applicable to points intermediate New Orleans and Jackson, rates to intermediate points being made by combination on New Orleans and materially higher than rates to Jackson. Rates on the first six classes to each of the river interior basing points, using the constructive mileage of 160 miles from New York to Norfolk and 250 miles to Savannah, Brunswick and Charleston, are as follows:

New York, N. Y., to—	Miles.	1	2	3	4	5	6
Atlanta, Ga.	544	105	93	83	68	56	44
Birmingham, Ala.	729	114	98	86	73	60	49
Athens, Ga.	546	105	93	83	68	56	44
Cordele, Ga.	418	105	93	83	68	56	44
Rome, Ga.	850	105	93	83	68	56	44
Meridian, Miss.	882	114	98	86	73	60	49
Jackson, Miss.	978	124	109	93	83	71	64

Rates to Atlanta, Rome and Athens equal average rates to non-competitive points over 2-line hauls of 400 miles; rates to Birmingham and Meridian equal average rates over 2-line hauls of 450 miles; rates to Jackson equal average rates over 2-line hauls of 550 miles, and rates to Cordele about equal average rates for hauls equal to the haul to Cordele. These rates all probably pay more than the additional cost of handling. On the route of the C. of G. from Macon to Atlanta the highest rated stations take rates of $1.25, $1.11, 98c 81c, 67c and 54c, such stations being about 500 constructive miles from New York. The average rates to non-competitive points made over 2-line hauls of 500 miles are $1.20, $1.04, 92c, 76c, 64c and 52c. On the S. Ry., Atlanta to Birmingham, the highest rated stations take rates of $1.30, $1.13, 98c, 83c, 68c and 55c for average distances of 650 miles. On the C. of G. from Savannah to Athens the highest rated intermediate point, Madison, Ga., 32 miles south of Athens and 514 constructive miles from New York, takes rates of $1.40, $1.23, $1.07, 89c, 71c and 56c, being in excess of average rates over 2-line hauls of 500 miles. On the S. A. L. from Savannah to Cordele the highest rated points center at Milan, Ga., 124 miles from Savannah and 374 constructive miles from New York, to which the rates are $1.39, $1.17, 99c, 78c, 64c and 51c, materially higher than average rates for 2-line hauls of 400 miles. On the S. Ry. via Norfolk to Rome, the highest rated point is Dallas, Ga., 811 constructive miles from New York via the route chosen, but only 546 via the short line. Rates to Dallas are $1.33, $1.17, $1.02, 87c, 73c and 58c. On the

route to Meridian the highest rated point on the A. G. S. Ry. between Birmingham and Meridian is Akron, Ala., 72 miles north of Meridian and 810 constructive miles from New York, from which the rates are $1.69, $1.45, $1.24.5, $1.03, 88c and 71.5c, being in excess of rates in this territory over like distances. On the route to Jackson the rates to all points except Newton, Miss., on the A. & V. Ry. between Meridian and Jackson, are blanketed with rates of $1.69, $1.48, $1.22, 95c, 82c and 70c. Rates to Newton, a junction with the N. O. M. & C. R. R. 31 miles west of Meridian, are $1.34, $1.15, $1.01, 83c, 69c and 55c. West of Newton the blanket rates given apply to all stations between Newton and Jackson, a distance of 65 miles. The haul to the basing point, Jackson, is 978 miles, and the first-class rate is $1.24. While the distance from Jackson to these points in no case exceeds 65 miles, the difference on first-class is 45c. On the route to Jackson via New Orleans the high-rate point is Terry, Miss., with rates from New York of $1.48, $1.23, $1.02, 84c, 74c and 63c. HELD, that carriers may continue the water-and-rail rates from New York to Birmingham, Rome, Meridian and Jackson lower than to intermediate points, but authority to continue rates to Atlanta, Athens and Cordele, Ga., lower than to intermediate points is denied, as is also authority to continue the water-and-rail rates from New York via Mobile and New Orleans to Meridian and Jackson, lower than to intermediate points. Rates in the following cases were found unduly discriminatory: (1) From New York to stations on the C. of G. Ry. between Macon and Atlanta; (2) from New York to stations on the G. of G. Ry. between Savannah and Athens; (3) from New York to stations on the S. A. L. between Savannah and Cordele; (4) from New York to stations on the S. Ry. intermediate to Rome; (5) from New York to points on the A. G. S. R. R. between Birmingham and Meridian; and (6) from New York to stations on the A. & V. R. R. between Jackson and Meridian. Fourth Section Violations in the Southeast. 30 I. C. C. 153, 297.

(n) **S. E. Case K. Rates from New Orleans to Atlanta, Birmingham, Athens, Rome and Cordele.**—The routes considered are as follows: (1) New Orleans to Atlanta, via L. & N. R. R. to Montgomery and W. Ry. of A. and A. & W. P. R. R. to Atlanta, 493 miles; (2) New Orleans to Birmingham, via L. N. R. R., 415 miles; (3) New Orleans to Athens, Ga., via L. & N. R. R. to Montgomery, W. Ry. of A. and A. & W. P. R. R. to Atlanta, and S. A. L. Ry. to Athens, 566 miles, rates to stations on the S. A. L. between Atlanta and Athens being blanketed with rates from New Orleans of $1.12, $1.03, 82c, 64c, 52c and 46c, and rates to Athens being 99c, 86c, 77c, 61c, 50c and 30c; (4) New Orleans to Rome, via L. & N. R. R. to Birmingham, and S. Ry. to Rome, 542 miles; (5) New Orleans to Cordele, Ga., via L. & N. R. R. to Montgomery and S. A. L. to Cordele, 488 miles. DEFENSE. Carriers sought to justify lower rates from New Orleans to Atlanta, Birmingham, Cordele, Athens and Rome than to intermediate points on the grounds: (1) That rates to each of these points had been reduced by the active competition of parallel competing lines, competition of eastern cities and competition between these cities and others seeking to distribute to a common market; (2) that the rates are subnormal, but (3) that they pay more than the additional cost of handling, and (4) that rates to intermediate points are not unreasonable. For more than 25 years rates from New Orleans to Atlanta, Rome, Cordele and Athens have been 4c less on all classes and commodities than rates on corresponding traffic from the Ohio River cities, reductions from the crossings being in all cases met by similar reductions from New Orleans. Thus reductions from New Orleans to Atlanta were not the result of competition, but resulted from other causes. Carriers serving Atlanta from New Orleans come into active competition at that point with carriers from New York and Ohio River cities, but Atlanta is distant from New Orleans, Cincinnati, Louisville, Cairo and New York, respectively, 493, 474, 473, 490 and 511 miles, and the competition of Atlanta as a distributing center does not justify the making of lower rates thereto than to intermediate points. Carriers serving Birmingham from New Orleans compete with carriers serving the same point from New York and Ohio River crossings. From New Orleans via the line chosen, the L. & N. R. R., the distance is 415 miles, while via the N. O. & N. E. and the A. G. S. Rys. the distance is 355 miles less than the distances from Cincinnati,

Louisville, Evansville or Thebes, and but 21 miles greater than the distance from Cairo, and 274 miles less than the constructive distance from New York. The distance from New Orleans to Athens is but 20 miles greater than the distance from Louisville, Cincinnati and New York. Cordele is 488 miles from New Orleans, 418 constructive miles from New York, 656 miles from Louisville and 645 miles from Cincinnati. Rome is 542 miles from New Orleans, 418 miles from Cincinnati, 417 miles from Louisville, and 584 constructive miles from New York. Rates from New Orleans to Rome have for many years been 4c less than rates from Ohio River crossings. Distances from New Orleans and rates therefrom to destinations in question were:

New Orleans, La., to—	Miles.	1	2	3	4	5	6
Atlanta, Ga.	493	94	83	74	59	48	37
Cordele, Ga.	488	94	83	74	59	48	37
Rome, Ga.	542	94	83	74	59	48	37
Athens, Ga.	566	99	86	77	61	50	30
Birmingham, Ala.	415	89	79	68	55	47	36

Rates to Atlanta, Rome and Cordele, third-class, are higher, but on the other classes lower than average rates over one-line hauls of 300 miles. Rates to Birmingham are less in all instances than rates to the other destinations, and on all classes except the last three are lower than average rates over one-line hauls of 300 miles. They all pay more than the additional cost of handling. On the route to Atlanta the high-rate point is Gabbettville, Ga., 80 miles south of Atlanta and 413 miles from New Orleans, rates being $1.31, $1.15, $1.03, 84c, 69c and 53c, as compared with average rates of $1.12, 98c, 87c, 72c, 60c and 49c over 2-line hauls of 400 miles. On the route to Birmingham the high-rate point on the L. & N. R. R. is Keystone, Ala., 394 miles from New Orleans, with rates of 96c, 81c, 64c, 59c, 54c and 47c, being less than average rates over one-line hauls for like distances. On the route to Athens the high-rate points between Atlanta and Athens at an average distance of 535 miles from New Orleans have blanket rates of $1.12, $1.03, 82c, 64c, 52c and 46c, being less than average rates to non-competitive points over 2-line hauls for like distances. On the route to Rome, Ga., Eden, Ala., is the high-rate point, to which rates from New Orleans, distant 448 miles, are $1.27, $1.11, 98c, 82c, 68c and 51c, as compared with average rates of $1.14, $1.00, 89c, 74c, 62c and 50c for 2-line hauls of 450 miles. HELD, that petitioners are not authorized to continue rates from New Orleans to Atlanta, Birmingham, Athens, Rome and Cordele lower than to intermediate points via direct lines. Rates found unduly discriminatory in the following cases: (1) Rates from New Orleans to stations on the A. W. & P. R. R.; (2) rates from New Orleans to stations on the S. A. L. Ry. between Montgomery and Cordele, and (3) rates from New Orleans to stations on the S. Ry. between Birmingham and Rome. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 314.

(o) **S. E. Case L. Rates from Ohio River Cities, Chicago and St. Louis to Interior Basing Points.**—The routes considered are: (1) Louisville to Atlanta, via L. & N. R. R. to Nashville, and N. C. & St. L. Ry. to Atlanta, 474 miles; (2) Cincinnati to Atlanta, via C. N. O. & T. P. Ry. to Chattanooga and S. Ry. to Atlanta, 492 miles; (3) Louisville to Birmingham, via L. & N. R. R., 394 miles; (4) Cincinnati to Birmingham, via C. N. O. & T. P. Ry. to Chattanooga and A. G. S. R. R. to Birmingham, 491 miles; (5) Louisville to Athens, Ga., via L. & N. R. R. to Nashville, N. C. & St. L. Ry. to Atlanta, and S. A. L. Ry. to Athens, 545 miles; (6) Cincinnati to Athens, via C. N. O. T. P. Ry. to Chattanooga, S. Ry. to Atlanta, and S. A. L. Ry. to Athens, 565 miles; (7) Louisville to Cordele, Ga., via L. & N. R. R. to Montgomery and S. A. L. Ry. to Cordele, 660 miles; (8) Cincinnati to Cordele, via C. N. O. & T. P. Ry. to Macon, and G. S. & F. Ry. to Cordele, 645 miles; (9) Louisville to Rome, Ga., via L. & N. R. R. to Nashville, N. C. & St. L. Ry. to Kingston, Ga., and Rome, 441 miles, Rome being on the Rome R. R., 18 miles west of Kingston, and rates to Rome being 98c, 87c, 78c, 63c, 52c and 41c; (10) Cincinnati to Rome via C. N. O. & T. P. Ry. to Chattanooga and S. Ry. to Rome, via C. N. O. & T. Ry. to Chat-

tanooga and S. Ry. to Rome, 426 miles; (11) Cairo, Ill., to Meridian, Miss., via M. & O. R. R., 367 miles; (12) St. Louis to Meridian, via M. & O. R. R., 522 miles; (13) Chicago to Meridian, via I. C. R. R. and M. & O. R. R., 731 miles; (14) Louisville to Meridian, via L. & N. R. R. to Birmingham and A. G. S. R. R. to Meridian, 547 miles; (15) Cincinnati to Meridian, via C. N. O. & T. P. R. R. to Chattanooga and A. G. S. R. R. to Meridian, 634 miles; (16) Cairo, Ill., to Jackson, Miss., via I. C. R. R., 373 miles; (17) St. Louis to Jackson, via I. C. R. R., 525 miles; (18) Chicago to Jackson, via I. C. R. R., 737 miles; (19) Louisville to Jackson, via L. & N. R. R. to Milan, Tenn., I. C. R. R. to Jackson, 564 miles; (20) Cincinnati to Jackson, via L. & N. R. R. to Midland, and I. C. R. R. to Jackson, 678 miles. DEFENSE. Carriers sought to justify lower rates from the Ohio River crossings to Atlanta, Birmingham, Athens, Rome, Cordele, Meridian and Jackson, and lower rates from Chicago and St. Louis to Meridian and Jackson, than to intermediate points, upon the grounds: (1) that rates between the named points of origin and destination have been influenced by competition of other routes between the same points, by competition of routes serving these points, from eastern cities, and by competition of points of destination for distributing trade in the surrounding territory; (2) that the rates are subnormal, but (3) pay more than the additional cost of handling, and (4) that rates to intermediate points are not unreasonable. Rates on the numbered classes from Baltimore and Ohio River crossings to Atlanta have been on a parity since 1879. This parity was the outcome of competition, discussion and agreements between the various carriers operating routes from west and east; but the present level of rates is not due to competition, and carriers from the west are at no disadvantage as compared with eastern carriers, either in distance or relative strength. In 1888 the lower Ohio River crossings took the same rate to Birmingham, while the rates from Cincinnati were considerably higher and rates from Memphis, Tenn., 4c lower. The K. C. M. & B. R. R., now the St. L. & S. F., taking the position that Memphis rates were too high as compared with rates from Nashville, accordingly established rates of 75c, 65c, 54c, 43c, 36c and 26c, observed as maxima at intermediate points; but while the fourth section has been observed as to class rates, many commodity rates have been published between Memphis and Birmingham which are not made applicable to intermediate points. The above reductions were met by corresponding reductions from the Ohio River crossings, but were not in those cases extended to intermediate points. Mileage to Birmingham from Memphis, Louisville, Evansville, Thebes, Cairo and Cincinnati is respectively 251, 394, 364, 362, 334 and 481 miles. Traffic from a large territory north of the Ohio River is routed through all of these gateways to Birmingham. Memphis as a gateway is nearer than the Ohio River cities, but it does not appear that the latter are at any disadvantage as against Memphis routes on traffic from the great western centers. Nor are they at any disadvantage at Birmingham as against routes from eastern cities. Carriers from Louisville and Cincinnati meet the competition of routes from eastern cities at Athens, Ga., but they are at no material disadvantage and the competition which Athens meets as a distributing center does not differ from that against which other cities in the same territory contend. It has been the policy of the M. & O. R. R. and other lines serving Meridian from Ohio River cities to maintain rates to Meridian not higher than concurrent rates to Jackson via the I. C. R. R. Jackson is but 44 miles from Vicksburg, necessitating lower rates than otherwise would apply. But rates between Vicksburg and Jackson being higher than to Jackson, it is obvious that Jackson does not obtain the depressed rates by proximity to Vicksburg. On the contrary, market competition between the two points has depressed rates to Jackson. Meridian is 96 miles east of Jackson on the A. & V. Ry. Competition between them as distributing centers has induced the M. & O. R. R. and other carriers to keep rates to the points on a parity. Carriers serving these two points from the Ohio River are at no disadvantage as against eastern carriers. Rates and distances to each of the points of destination in question were: (See Table Page 513.)

These rates, while higher than rates to south Atlantic ports and rates to Southeastern river points, are below average rates for like distances to non-competitive points in this territory, but probably pay more than the additional

From—	Miles.	1	2	3	4	5	6
Louisville to Atlanta	474	98	87	78	63	52	41
Cincinnati to Atlanta	492	98	87	78	63	52	41
Louisville to Birmingham	394	79	69	59	47	40	30
Cincinnati to Birmingham	491	89	79	68	55	47	36
Louisville to Athens	545	103	90	81	65	54	43
Cincinnati to Athens	565	103	90	81	65	54	43
Louisville to Cordele	660	123	107	96	78	65	52
Cincinnati to Cordele	645	123	107	96	78	65	52
Louisville to Rome	441	98	87	78	63	52	41
Cincinnati to Rome	426	98	87	78	63	52	41
Cairo to Meridian	367	83	72	60	51	42	37
St. Louis to Meridian	522	98	84	70	59	49	43
Chicago to Meridian	731	118	99	80	67	56	49
Louisville to Meridian	547	98	84	70	59	49	43
Cincinnati to Meridian	634	106	92	78	66	55	48
Cairo to Jackson	373	83	72	60	51	42	37
St. Louis to Jackson	525	98	84	70	59	49	43
Chicago to Jackson	737	118	99	80	67	56	49
Louisville to Jackson	564	98	84	70	59	49	43
Cincinnati to Jackson	678	106	92	78	66	55	48

cost of handling. On the route from Louisville to Atlanta the high-rate point is Kennesaw, Ga., 29 miles north of Atlanta and 445 miles from Louisville, the rates being $1.18, $1.02, 90c, 75c, 62c and 48c, as against average rates of $1.14, $1.00, 89c, 74c, 62c and 50c for 2-line hauls of 450 miles north of Atlanta and 451 miles from Cincinnati, the rates being $1.31, $1.16, $1.04, 87c, 71c and 56c, materially exceeding average rates for like distances over 2-line hauls. On the route from Louisville to Birmingham the high-rate points are those through Bangor to Blount Springs, Ala., 35 miles from Birmingham and 359 miles from Louisville, rates being 99c, 83c, 65c, 50c, 55c and 45c, as compared with average rates of $1.03, 89c, 73c, 69c, 55c and 47c over 1-line hauls of 350 miles. On the route from Cincinnati to Birmingham the high-rate points center at Sulphur Springs, Ga., 369 miles from Cincinnati, the rates from which are 98c, 87c, 78c, 63c, 52c and 41c, which compared with average rates over 2-line hauls for like distances. On the route from Louisville to Athens the line passes through Atlanta, points between Athens and Atlanta taking approximately the same rates, viz., $1.16, $1.05, 86c, 68c, 56c and 50c, less than average rates for 2-line hauls for like distances. On the route from Louisville to Cordele the high-rate points are Pittsview and Cottonton, Ala., 73 miles east of Montgomery and 551 miles from Louisville. Rates to Pittsview are $1.51, $1.33, $1.22, $1.02, 87c and 65c, as compared with average rates of $1.28, $1.12, 99c, 83c, 69c and 56c for 2-line hauls of 550 miles. On the Cincinnati-Cordele route the high-rate point on the G. S. & F. between Macon and Cordele is Vienna, Ga., 9 miles north of Cordele and 636 miles from Cincinnati, rates being $1.43, $1.25, $1.12, 91c, 76c and 61c, compared with average rates of $1.37, $1.18, $1.06, 90c, 74c and 60c for 650 miles. On the Louisville-Rome route the high-rate point is Kingston, Ga., 18 miles east of Rome and 423 miles from Louisville, from which (Kingston) the rates are $1.09, 96c, 84c, 72c, 59c and 45c, corresponding to average rates over 2-line hauls for like distances. On the Cincinnati-Rome route the high-rate point is Oostanaula, Ga., 90 miles north of Rome and 399 miles from Cincinnati, rates being $1.22, $1.06. 95c, 81c, 67c and 52c, as compared with average rates of $1.12, 98c, 87c, 72, 60c and 49c for 2-line hauls of 400 miles. On the Cairo-Meridian route the high-rate point is Lauderdals, Miss., 18 miles north of Meridian and 349 miles from Cairo, rates being 99c, 82c, 71c, 60c, 49c and 43c, less than average rates for 1-line hauls. On the St. Louis-Meridian route, Lauderdale, Miss., 504 miles from St. Louis, is the high-rate point, with rates of $1.33, $1.11, 95c, 78c, 62c and 54c, as against average rates of $1.16, 99c, 83c, 70c, 60c and 51c for 1-line hauls of 500 miles. On the Chicago-Meridian route, Lauderdale, 713 miles from Chicago, is the high-rate point, with rates of $1.44, $1.19, $1.02, 84c, 68c and 59c, less than average rates for 2-line hauls of equal distance. On the Louisville-Meridian route the high-rate point is Stewart, Ala., 75 miles north of Meridian and 472 miles from Louisville, with rates of $1.19, $1.06, 88.5c, 75c, 65c and 50c, comparing favorably with average rates for 2-line hauls of equal distance. On the Cincinnati-Meridian route, Stewart, 559 miles from Cincinnati, is the high-rate point, with rates of $1.29, $1.16, 98.5c, 83c, 72c and 56c, comparing favorably with average rates over 2-line hauls for like dis-

tances. On the Cairo-Jackson route the high-rate point is Canton, Miss., 23 miles north of Jackson and 350 miles from Cairo, with rates of 89c, 71c, 59c, 50c, 43c and 38c, less than average rates for 1-line hauls of like distances. On the St. Louis-Jackson route Canton is the high-rate point, 502 miles from St. Louis, with rates of $1.23, $1.00, 83c, 68c, 56c and 49c, comparing reasonably with average rates over 1-line hauls of 500 miles. On the Chicago-Jackson route, Canton, 714 miles from Chicago, is the high-rate point, with rates of $1.34, $1.08, 91c, 75c, 62c and 54c, comparing favorably with average rates for 1-line hauls over like distances. On the Louisville-Jackson route, Canton is the high-rate point, with rates from Louisville the same as from St. Louis, for a distance of 521 miles, not higher than average rates for like distances. On the Cincinnati-Jackson route Canton, 655 miles from Cincinnati, is the high-rate point, with rates of $1.32, $1.08, 91c, 75c, 62c and 54c, comparing favorably with average rates for 2-line hauls over like distances. HELD, that petitioners are not authorized to continue rates from Cincinnati and Louisville to Atlanta, Birmingham, Athens, Cordele and Rome lower than the intermediate points. Authority to continue rates from Chicago, St. Louis, Cairo, Louisville and Cincinnati to Meridian and Jackson lower than to intermediate points denied. Rates in the following cases also found unduly discriminatory: Cincinnati to stations on the S. Ry. north of Atlanta; Louisville to points on the S. A. L. Ry. between Montgomery and Cordele; Cincinnati to stations on the G. S. & F. R. R. north of Cordele; Cincinnati to points on the S. Ry. north of Rome, and St. Louis to stations on the M. & O. R. R. north of Meridian. Fourth Section Violation in the Southeast, 30 I. C. C. 153, 319.

(p) **E. Case S. Miscellaneous Rates —Rates on Lettered Classes.**—The reasons urged as justifying relief in respect to the lettered classes are not different from those described as to the numbered classes. HELD, that where relief is afforded from the fourth section as to numbered classes and carriers authorized to continue higher rates to intermediate points, with the limitation that these must not exceed average rates for like distances, this limitation will apply both as to numbered and lettered classes; and where relief is authorized with the provision that rates to intermediate points shall not exceed designated rates on the numbered classes, the rates on the lettered classes must not be higher than designated rates for certain lettered classes for corresponding distances. COMMODITY RATES. Disparities shown above between class rates to long-distance points and to intermediate points do not fairly represent disparities in commodity rates. Many of the southeastern cities involved have a large number of commodity rates from eastern cities, Ohio River crossings and New Orleans materially lower than the rates on classes to which the commodities belong, while comparatively few commodity rates are made to intermediate points. The established commodity rates are made on 19 staple articles to Atlanta and to Kennesaw, an intermediate point on the N. C. & St. L. Ry., and has had the effect of increasing the discrimination against Kennesaw in 10 cases. The establishment of commodity rates on these 19 articles has increased the disparity between Greenwood rates and Augusta rates in 5 cases, and decreased it in 8 cases; increased disparity between Bibb rates and Macon rates in but 2 cases, and decreased it in 5 cases; increased disparity between Allendale and Savannah in 11 cases, and decreased it in 4 cases; and increased disparity between Atmore and New Orleans in 13 cases. HELD, that in all instances where carriers are by this decision authorized to charge lower rates to more distant than intermediate points, and the amounts in which rates on the several classes to intermediate points may exceed rates to more distant points is determined, rates on a commodity to an intermediate point shall not exceed the commodity rate to the more distant point more than the difference in cents per 100 lbs. by which the rate on the class to which the commodity belongs exceeds the rate on the same class to the more distant point. Fourth Section Violations in the Southeast. 30 I. C. C. 153, 333.

(q) Though the Commission, in passing on a fourth section application finds the rates to the more distant point justified by the competition there existing, and the rates to intermediate points bearing reasonable comparison with other rates made for like distances in the same territory under fairly similar conditions, grants the application, its ac-

tion is not to be construed as a finding that the rates to the intermediate points are just and reasonable. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 157.

(r) A fourth-section violation should not extend beyond the real necessities of competitive or other controlling influences. Emlenton Petroleum Rates, 29 I. C. C. 519, 521.

(s) The fundamental reason for granting relief to any line at a given point is the meeting at that point of the competition of other carriers, against which competition the petitioner is at a disadvantage. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 304.

(t) So long as lower rates are maintained to more distant points on or via the same line, the rates to intermediate points should not exceed the average rates over one-line hauls for like distances. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 253.

(u) A rate to a given destination does not violate the long-and-short-haul clause of the fourth section, where not higher than the rates to the designated intermediate point. Railroad Commrs. of Montana v. A. T. & S. F. Ry. Co., 32 I. C. C. 316, 318.

(v) The maximum of public benefit from the fourth section will result from the enforcement of conditions that will tend to promote, and not to diminish or retard, competition. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 629.

(w) Complainant attacked the class and commodity rates from Kansas City, Mo., St. Louis, Mo., and Chicago, Ill., to New Mexico destinations as unreasonable and unduly prejudicial. First class rates from the named points of origin were 159, 159, and 179c, as compared with rates of 170, 170, 250 and 161c from Kansas City to the intermediate points, Las Vegas, Albuquerque, Gallup, and Alamogordo; rates of 212, 212, 279 and 195c from St. Louis; and 232, 232, 290 and 215c from Chicago. From Kansas City the first class rates to Texas, Colorado, and Utah common points were 147, 115, and 200c respectively. The low rates to El Paso were defended as compelled by: (1) competition with the other Mexican gateways, Eagle Pass and Laredo; (2) low water-and-rail rates from the eastern seaboard and from Europe to El Paso via the Mexican ports of Tampico and Vera Cruz; and (3) competition of the water-and-rail routes from the east via New Orleans, Galveston, and Texas City. It appeared (1) that the carriers had voluntarily joined in establishing identical rates to the gateways to place them on an equality in their competition with each other in Mexico, and (2) that shipments were not made to El Paso via the Mexican ports, though traffic had moved via them to cities in northern Mexico reached by jobbers at El Paso. (3) the situation relative to the routes via New Orleans, Galveston, and Texas City is shown by the following table:

	1 Cts	2 Cts	3 Cts	4 Cts	5 Cts	A Cts	B Cts	C Cts	D Cts	E Cts
New York to Galveston	75	63	55	48	32	36	32	27	26	26
Galveston to El Paso	112	101	86	81	61	64	56	48	36	29
Galveston Combination	187	164	141	129	93	100	88	75	62	55
Joint water-and-rail rate, New York to El Paso	184	158	138	129	95	101	91	72	60	54
Kansas City—St. Louis to El Paso	159	138	122	116	86	89	81	63	51	44
Chicago to El Paso	179	154	134	126	93	98	89	70	57	49

In nearly all cases the class rates from the Atlantic Seaboard to El Paso were higher than from Kansas City, St. Louis, and Chicago. HELD (1) that as to commodities on which lowest available rates from Atlantic seaboard to El Paso were 65c or more no relief under the fourth section would be granted carriers operating from Kansas City and St. Louis to El Paso: where rates from the seaboard were less than 65c they might right them, intermediate rates not to exceed 65c; (2) first class rates from Kansas City to Tucumcari, Las Vegas, Silver City and Lordsburg fixed at 155, 170, 210, and 225c; such rates not to be exceeded in rates from St. Louis and Chicago by more than 30 and 50c respectively; COMMODITY RATES TO

NEW MEXICO: The rates to Albuquerque were as follows:

From	To	Agricultural Implements	Beer	Canned Goods	Emigrant Movables	Furniture	Packing-house Products	Pape Building and Roofing	Pipe, Cast and Wrought Iron	Stoves	Sugar and Syrup	Wire and Nails
		Cts	Cts	Cts	Cts	Cts	Cts	Cts	Cts	Cts	Cts	Cts
Kans. City	Albuquerque	91	60	70	55	135	86	80	72	89	64	74
St. Louis	Albuquerque	100	75	86	68	152½	101	90	74	94	81	87
Chicago	Albuquerque	107	80	91	73	160	106	95	79	99	86	92

HELD, that the rates from Kansas City should not exceed the following: On agricultural implements, 80c; beer, 65c; canned goods, 65c; emigrant movables, 55c; furniture, N. O. S., $1.19; packing-house products, 80c; building and roofing paper, 70c; cast iron and wrought-iron pipe, 65c; stoves, 85c; sugar and syrup, 60c; wire and nails, 70c. Rates from St. Louis and Chicago not to exceed above rates by more than 10 and 20c respectively. RATES ON ALFALFA HAY FROM THE PECOS VALLEY: The rate from Roswell, N. Mex., to Fort Worth, Tex., was 30c via Clovis, N. Mex., and 33c via Pecos, Tex. The former rate of 34c involved a haul of 885 miles, which had been reduced to 723 via the north route and 565 miles via the south route. HELD that the 30c rate should be reduced to 28c. RATES ON LUMBER TO THE PECOS VALLEY: Rates of 32, 35, and 37c applied from Texas and Louisiana points on the A. T. & S. F. Ry., Texas mills on other lines, and Louisiana and Arkansas Mills on other lines. HELD that such rates were unreasonable to the extent that they exceeded 30, 33, and 35c. LUMBER AND SUGAR FROM THE PACIFIC COAST: Lumber and Sugar from the Pa ific Coast: HELD that the rates from California points including San Francisco and Los Angeles to points on the A. T. & S. F. Ry. from Vaughn to Clovis should not exceed rates from the same points to Tuscumcari. Corp. Comm. of New Mexico v. A. T. & S. F. Ry., 34 I. C. C. 292.

(x) There is no warrant in law for the contention that while under the law the carriers are required to recognize the aggregates of intermediate rates as maxima this is required only where the factors entering into such aggregate have been voluntarily established. If this construction were put upon this provision of the fourth section, railroads would be allowed to charge through rates higher than the aggregates of the intermediate rates where one factor of the aggregates was depressed by competition at a point, the rate so made becomes the lawful factor in making up the aggregate of the intermediate rates. Spartanburg Chamber of Commerce v. S. Ry. 34 I. C. C., 484, 494.

§8. Markets.

See Basing Points and Lines, §2 (l); Market Competition.

(a) Competition between markets of distribution does not constitute a justification for the maintenance of lower rates to a more distant than to an intermediate point. The competition of carriers serving other markets of supply does not in some instances justify the making of lower rates to more distant than to intermediate points, when it is found: (1) that one market is under a material disadvantage as against that from another, and (2) that the line seeking relief is meeting consistently at all points the competition against which relief is sought. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 279.

(b) Competition of carriers serving other markets of supply does constitute a justification in some instances for making lower rates to more distant points. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 279.

(c) Competition between distributing markets does not constitute a justification for the maintenance of lower rates to a more distant than to an intermediate point. Cullman Commercial Club v. L. & N. R. R., 33 I. C. C. 634, 637.

(d) Competition between carriers serving markets of production may properly be a valid basis for fourth section

relief. Corp. Comm. of New Mexico v. A. T. & S. F. Ry., 34 I. C. S. 292, 301.

§9. Railroad Competition.

See Railroad Competition: Through Routes and Joint Rates, §6.

(a) Carriers whose lines are extremely circuitous should be permitted to meet rates of their short-line competitors, although charging higher rates at intermediate points upon their lines. Application of this principle, however, is subject to the qualification that the rates from or to the intermediate points shall bear a just and reasonable relation to the rate from or to the long-distance points. Standard Oil Co. v. Pennsylvania Co., 29 I. C. C. 524, 525.

(b) At the suggestion of the Commission, 28 I. C. C. 64, carriers filed schedules of proposed proportional rates for application west of the Mississippi River on traffic moving between interior Iowa points and points east of the Indiana-Illinois state line. The schedule was made up by using the Iowa distance scale from the nearest river crossing, adding thereto 2c on the first two classes and 1c on the remainder, and applying the resulting rate from the east-bank points. The class rates from New York and other eastern cities to west-bank points being fixed at the same differentials higher than the rate to St. Louis, application by the carriers of St. Louis rates as proportional rates to east-bank points resulted in making the through rate from eastern cities, arrived at by use of the two proportionals, the same as the combination of locals through the nearest river crossing. But the application of these proportionals from all the upper gateways gave rates substantially below the Iowa mileage scale, and therefore less than the combination of locals. A rate of 34.8c to Des Moines was established on the basis of a short line of 155 miles, as against a rate of 41.2c to Slater, an intermediate point, whose short-line distance was 193.6 miles. HELD, the proportional class rates are approved, and the issuance of a fourth section order directed authorizing carriers to continue to meet the rate over the direct route from the nearest gateway to Iowa points, and to maintain higher rates to intermediate points not exceeding the Iowa distance scale over the direct route from the nearest river crossing by more than 2c or 1c, according to class. Interior Iowa Cities Case, 29 I. C. C. 536.

(c) Complainant attacked the 62c scale of local class rates from St. Louis to Springfield, Mo., on shipments from Central Freight, Southeastern and Carolina territory as unreasonable and discriminatory, compared with the 55c scale applicable from St. Louis to Kansas City, and prayed that the 55c scale be established to Springfield. Springfield is located on the St. L. & S. F. R. R. Co., 239 miles southwest of St. Louis and 201 miles southeast of Kansas City, and also on a branch of the St. L. I. M. & S. Ry., 449 miles from St. Louis. Missouri had two intrastate scales, a 61½c scale for territory to the south of St. Louis and Kansas City, and a 67c scale for territory to the north. The M. K. & T. Ry., 182 miles in length, from Hannibal, on the Mississippi River, to points on the St. L. & S. F. R. R. intermediate between Kansas City and Springfield, adopted the 62c scale, forcing that carrier to meet it at such points, and thus at Springfield, as a point intermediate to St. Louis, as well. On ocean-and-rail traffic from the Atlantic seaboard to Springfield the 55c rate applies, and the bulk of the traffic moving through Springfield on the St. L. & S. F. R. R. was of this nature; and its real competitor was St. Louis, not Kansas City. Springfield was accorded the same commodity rates from Central Freight Ass'n and other eastern territory as obtained to Kansas City. The first-class rate to Carthage, 75 miles west of Springfield, was 74c, and if Springfield were given the 55c scale the difference in rates would be 19c. The first-class rates from Memphis for distances of from 225 to 244 miles were from 74c to $1. The short line from St. Louis to Kansas City was 277 miles; via the Frisco lines the distance was 440 miles. The traffic between St. Louis and Kansas City by the direct lines was far denser than that by way of the Ozarks, and the grades much lower, the operating conditions more favorable and the financial condition of the lines superior. Disregarding the benefits which have accrued to Springfield under the commodity and ocean-and-rail rates, and the fact that the rates are lower than they would be but for the competition of the M. K. & T. Ry., complainant's conten-

tion presents the single consideration that the distance from St. Louis to Springfield via the St. L. & S. F. R. R. is shorter than the average short-line distance between the rivers. HELD, that in view of the benefits which have already been accorded to Springfield under commodity and ocean-and-rail rates, and of the fact that the rates assailed are lower than would have been given it but for the competition of the M. K. & T. Ry., the challenged rates cannot be held unreasonable or discriminatory. Fourth section applications granted in part. Complaint dismissed. Springfield Traffic Bureau v. St. L. & S. F. R. R. Co., 29 I. C. C. 600.

(d) The Fort Scott Kan., commercial organization attacked the higher class and commodity rates from St. Louis, Mo., and East St. Louis, Ill., to Fort Scott, a distance of 342 miles, as discriminatory when compared with those in effect to Kansas City, Mo., a distance of 441 miles via the same route. Fort Scott, Kan., near the Kansas-Missouri line, is reached from St. Louis by the M. K. & T., the M. P. and the St. L. & S. F. R. Rs. These roads also reach Kansas City, but the St. L. & S. F. R. R. is the only one via which Fort Scott is intermediate to Kansas City. Via defendant's line it is 342 miles from St. Louis to Fort Scott; from Fort Scott to Kansas City, 99 miles; from St. Louis to Kansas City, through Fort Scott, 441 miles. The rates of all three lines from St. Louis to Fort Scott are the same. The rates attacked were as follows:

St. Louis to	1	2	3	4	5
Fort Scott	74	61	45	32	27
Kansas City	60	45	35	27	22

	A	B	C	D	E
Fort Scott	30.5	25	20	15	13
Kansas City	24.5	19.5	17	13.5	11

Complainants competing with dealers at Kansas City in selling in Kansas, higher freight rates place them at a disadvantage with such dealers, who can use the combination of rates through Kansas City to the same destinations. The record shows that the scale of class rates from St. Louis to Kansas City was made equal to that from Hannibal, Mo., to Kansas City, 198 miles. The St. Louis-Kansas City lines being desirous of handling traffic originating in the East, destined to Kansas City, and to place St. Louis on an equality with shippers at other Mississippi River crossings, felt compelled to meet the rates from Hannibal. Subsequently the Missouri railroad commission prescribed for 200 miles substantially the scale of class rates that had been in effect from Hannibal to Kansas City. The rates are now less than the state commission scale. The class rates are graded upward from St. Louis westward via defendant's line, in accordance with the distance scale of the Missouri railroad commission, until Lamar, Mo., is reached. North of Lamar the combinations through Kansas City would be less than if the scale were continued on the basis of the distance from St. Louis; consequently the rates diminish as Kansas City is approached. It appeared that Lamar, 40 miles nearer St. Louis than is Fort Scott, pays higher rates on Classes 2 and A than does Fort Scott; that Arcadia, Kan., 18 miles nearer, pays higher rates on Classes 2, 4 and A than Fort Scott. Olathe, Paola and Pleasanton, Kan., points between Fort Scott and Kansas City, are reached from St. Louis by more direct lines than defendant's, and their rates are influenced, if not wholly controlled, by these lines. Nevada, Mo., 21 miles east of Fort Scott, on the M. K. & T. Ry., has the same class rates from St. Louis as Fort Scott, except that the first-class rate is 71c, the rates to Nevada being controlled by the Missouri railroad commission scale. The rates from Kansas City to Fort Scott and a number of other Kansas points were adjusted on the basis of percentages of the combinations on Kansas City by an arbitration in 1886, under which the rates to Fort Scott were fixed at 80 per cent, but later reduced on account of changes. Although Fort Scott is served by three carriers, complaint was made against one line on which that city is intermediate from Kansas City to St. Louis. It appeared from the record that defendant in publishing rates to Kansas City lower than to Fort Scott was meeting at Kansas City the rates of shorter and more direct lines over which it had no control. HELD, the application of rates from St. Louis to Fort Scott that exceeded the rates to Kansas City by the present difference was justified under the circumstances disclosed by the record, and should be allowed to continue. Complaint dismissed, and the fourth section application of defendant granted. Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I. C. C. 629.

(e) Complainant attacked the rate of 60c per gross ton for the transportation of imported iron ore in carloads from Girard Point, Philadelphia, to Island Park, Pa., a distance of 88.6 miles, yielding a ton-mile revenue of 6.77 mills, as unreasonable and in violation of the fourth section, in that it exceeded the rate to South Bethlehem, Pa., a distance of 96.2 miles via defendant's line. The short line from Philadelphia to South Bethlehem, via the P. & R. Ry., is 57 miles, and the rates via the short line were 60c to Island Park and 50c to South Bethlehem. Defendant's rate to Island Park involved a two-line haul. HELD, that it appearing from the facts that defendant's 50c rate to South Bethlehem was forced by short-line competition, an order should issue relieving defendants from the operation of the fourth section. Complaint dismissed. Thomas Iron Co. v. P. Ry. Co., 28 I. C. C. 608.

(f) Lower rate in effect to farther distant point forced by short-line competition, justified. Thomas Iron Co. v. P. R. R. Co., 28 I. C. C., 608, 609.

(g) Carrier with a circuitous route which is meeting rate of short line, held to be justified in charging a higher rate for the shorter than for the longer haul. Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 25.

(h) In proper cases long line is relieved from operation of section 4 as to intermediate points when the rate to the farther distant point is made to meet the rate of a short-line competitor. Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120, 122.

(i) Carriers with long lines permitted to deviate from section 4 to meet rate of direct route. Interior Iowa Cities Case, 29 I. C. C. 536, 538.

(j) Competition of a short line may justify a circuitous line in maintaining lower rates to the comptitive point than to intermediate points.- Cullman Commercial Club v. L. & N. R. R., 33 I. C. C. 634, 636.

(k) Complainant assailed the maintenance of higher rates from New Orleans, La., to Cullman, Ala., intermediate to Decatur, Ala., than were maintained to Decatur, as in violation of the fourth section. First class rates via the L. & N. R. R. from New Orleans to Cullman and Decatur were 102 and 89c for distances of 469, and 501 miles. The same rates to Decatur were applied via five other routes for distances of 441, 493, 533, 585 and 620 miles, but in each case the haul was via two or more lines. No traffic moved by water from New Orleans to Decatur; and although the rail rates from New Orleans to Memphis were water compelled, the combination on Memphis was higher than the all-rail rates direct from New Orleans to Decatur. HELD that maintenance of higher rates from New Orleans to Cullman than were maintained to Decatur was unjustly discriminatory to Cullman. Fourth section application denied. Cullman Commercial Club v. L. & N. R. R., 33 I. C. C. 634.

(l) Defendants are entitled to relief from long-and-short-haul rule with respect to rates on lumber from Chattanooga, Tenn., and Huntsville, Ala., via Nashville, Tenn., on account of the circuitous route and because it appears that they have no control over the rate from Nashville or Chattanooga to Newark, N. J. Atha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919.

(m) Complainants attacked the combination rates from Inman, Kans., via Kansas City to various destinations in southwestern Missouri as unreasonable, discriminatory, and in violation of the fourth section. Lower joint rates via a different route had been accorded Hutchinson and McPherson, Kans., to which points Inman was intermediate; but these had been withdrawn after the hearing. Rates from Inman were from 17 to 20c on flour and from 15 to 18c on bran and shorts, for distances averaging 250 miles; as compared with representative rates of from 12½ to 14½c on flour and from 10½ to 12½c on bran and shorts under the "higher Kansas City rate basis" for minimum distances of from 202 to 408 miles. HELD (1) The fourth section violations having been removed, fourth section application denied; (2) That reasonable rates not to exceed 14½c on flour and 13c on bran and shorts should be established from Inman to the destinations in question Reparation awarded. Ennis Milling Co. v. C. R. I. & P. Ry., 34 I. C. C., 197.

(n) In Interior Iowa Cities case, 29 I. C. C. 536, the Commission approved a schedule of proportional class rates for application west of the Mississippi Ri-

ver on traffic moving between interior Iowa cities and points east of the Indiana-Illinois state line; through rates not to exceed the sum of the locals to and from the river crossings by more than 2, 2, 1, 1, 1, 1, 1, 1, 1, and 1c on the various classes. Certain interior points on the C. R. I. & P. Ry. between Burlington, Iowa, and Rock Island, Ill., and on the M. N. & S. Ry. between Burlington and Muscatine, Iowa, still enjoyed the same rates as the river crossings. Competition of the short lines reaching Burlington and Muscatine respectively compelled the mentioned carriers to extend the rates applicable to the crossings to those points. They therefore asked relief from the rule of the fourth section to meet such competition while applying at the intermediate points the higher rates provided for in 29 I. C. C., 536. HELD that the relief prayed for should be granted, the proposed rates being on the same basis as those approved as to other interior points. Proportional Class Rates to Iowa Points, 34 I. C. C. 278.

(o) Complainant attacked the rates on classes and certain commodities from the Missouri River and points east to Montrose, Olathe, Delta, Hotchkiss, and Paonia, Colo., local points on the D. & R. G. R. R., as unreasonable, and discriminatory compared with rates to Grand Junction, Colo., and Salt Lake City, Utah. First class rates from St. Louis, Mo., to Montrose, Grand Junction, and Salt Lake City, for hauls of 1272, 1199, and 1418 miles were 302, 247, and 247c; carload rates on agricultural implements, 142 1-2, 117 1-2, and 117 1-2c. But rates to Utah common points had been compelled by competition with the U. P. R. R., and Grand Junction was intermediate to Salt Lake City. The points of origin in question might be reached via a narrow gauge cut-off from Salida, Colo., considerably shortening the distance via the through route; but this involved a transfer of freight at Salida, steeper grades and greater curvatures. HELD (1) that the rates assailed had not been shown to be unreasonable or discriminatory; (2) that no violation of section 4 was shown; (3) that the request was an attempt to apply to local branch-line points a rate basis applied to other points not by voluntary action, but by order of the Commission or by force of competition. Complaint dismissed. Montrose & Delta Counties Freight Asso. v. D. & R. G. R. R., 34 I. C. C. 393.

(p) The Commission will not disregard the interests of lines that are competitive, nor fix competitive rates with consideration only of the short line. Spartanburg Chamber of Commerce v. S. Ry., 34 I. C. C., 484, 494.

§10. Water Competition.

See Water Competition.

(a) While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate cannot be justified on the ground that it is necessary to suppress water competition. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C., 569. 583.

(b) The application to an interior point of a higher rate than that to ports, but which is not shown to be unreasonable, does not subject the former to undue prejudice or disadvantage within the meaning of section 3 of the Act. Southern States Supply Co. v. S. Ry. Co., 31 I. C. C. 30, 31.

(c) Complainant attacked the rate of 22c on cast-iron pipe in carloads from Birmingham, Ala., to Columbia, S. C., yielding 10.6 mills per ton-mile for 413 miles, as unreasonable and discriminatory compared with rates of 15c to Charleston, S. C., Savannah, Ga., and Jacksonville, Fla. The rate to Columbia is as low as those to southeastern interior cities generally, which are higher than those to the ports, compelled by water competition. Water carriers make a rate of 15c from Philadelphia to south Atlantic ports. HELD, that the lower rate to the ports is due to controlling competition, and that the rate to Columbia is neither shown to be unreasonable nor unduly prejudicial. Complaint dismissed. Southern States Supply Co. v. S. Ry. Co., 31 I. C. C. 30.

(d) Rates to various points along Mississippi and Yazoo rivers influenced by active river competition. Rates on Sugar, 31 I. C. C. 495, 503.

(e) Petitioners sought authority to establish a rate of 40c minimum 80,000 lbs. on asphaltum, barley, beans, and canned goods in carloads from San Francisco, San Pedro, and Wilmington, Cal., via the S. P. Ry. and G. H. & S. A. Ry. to Galveston, Tex.; thence via steamship to New York, N. Y., Philadelphia, Pa., Baltimore, Md., Boston, Mass., and Charleston, S. C., while continuing higher rates from, to, and between intermed-

iate points. The highest rate at any intermediate point was on asphaltum and barley, 55c; beans and canned goods, 85c; canned salmon, 70c. It was proposed to apply the 40c rate only from terminals, and to construct rates from intermediate points by adding the local rates to the nearest Pacific terminal. This would result in the following rates from Stockton and Sacramento, Cal., as typical points; on barley, 44 1-2c and 47 1-2c; on beans, 45 and 47 1-2c; on canned goods, 47, and 47 1-2c. The existing rate by sea on all these commodities was 30c. The route in question had lost to the Panama Canal route since July 1, 1914, two-thirds of its former proportion of asphaltum and canned goods traffic and three-fourths of its proportion of bean traffic. Most of the canned goods and salmon originated near the California ports, and most of the asphaltum and beans moved thereto at rates of 20c or less. The total additional cost of moving this traffic from San Francisco to New York via the route in question would not exceed $6.88 per ton. HELD, that carriers were authorized to establish the rates proposed, since they could not secure any considerable proportion of the traffic at higher rates and the proposed rates from, to, and between intermediate points did not appear unduly discriminatory. Rates On Asphaltum, Barley, Beans, and Canned Goods, 33 I. C. C. 480.

(f) Because of water competition at Vicksburg, Miss., carrier granted authority to maintain lower rate on apples from Front Royal, Va., to that point than to Jackson, Miss., an intermediate point. Wilson Produce Co. v. N. & W. Ry. Co., Unrep. Op. A-905.

V. PROCEDURE.

See Procedure Before Commission.

§11. Complaints and Orders.

See Procedure Before Commission, II.

(a) Higher rate in effect on gum lumber from Houston, La., to Kansas City, Mo., than from Shreveport. Houston is intermediate to Shreveport. Application on file for relief from Section 4, and tariff proposing increase in rates from Shreveport now under suspension. Complaint dismissed and questions not decided. Mansfield Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-193.

(b) Where rates are found to be unreasonably high, the fact that they have been published to remove a rate factor indicating a violation of the fourth section cannot be accepted as a justification for the change. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 422.

(c) Where joint through rates which contravene the rule of the fourth section respecting the aggregate of intermediate rates are covered by fourth-section application, no order for future entered in an ordinary reparation case involving such rates. Sunderland Bros. Co. v. A. T. & S. F. Ry. Co., Unrep. Cp. A-705.

(d) Where joint through rates to Carolina points were assailed as in violation of the fourth section, and the defendants stated that they hoped to remove these irregularities during the readjustment in progress, HELD that immediate action by the Commission was not advisable. Corporation Commission of N. C. v. S. Ky. 33 I. C. C., 487, 496.

(e) Although a complainant alleges no violation of section 4, the Commission will take judicial notice of the fact, on its records, that that fourth section applications have been filed, even where not set for hearing with the complaint. Board of Trade of Kansas City, v. C. M. & St. P. Ry., 34 I. C. C., 209.

§12. Evidence.

See Evidence, §13 (1), (a).

(1) Burden of Proof.

See Burden of Proof.

(a) On shipment of cast iron pipe and fittings from Chattanooga, Tenn., to Hillsboro, Ill., and Bessemer, Ala., to Mitchell, Ill., no showing being made that higher rates to intermediate points, which were protected by applications filed with the Commission, were unreasonable, reparation denied. United States Cast Iron Pipe & Foundry Co. v. N. C. & St. L. Ry. Co., A-314.

(b) In a case wherein a violation of the long-and-short-haul provision of the fourth section was alleged, it was not shown that any traffic moved to the lower rated points during the time when the rate to the intermediate point was higher; and the circumstance of an experimental shipment made by complainant fails, of itself, to prove undue discrimination against the inter-

mediate point. Kenner Truck Farmers' Ass'n v. I. C. R. R. Co., 32 I. C. C. 1, 4.

(c) The reasonableness of proposed increased rates cannot be established simply by pointing to fourth section violations which are thereby obviated. Rates between Shreveport and Texarkana, 32 I. C. C. 180, 182.

§12. (2) Circumstances of Probative Force.

See Evidence.

(a) A rate otherwise reasonable is not shown to be unduly low by the presence in the carrier's tariffs of a higher rate for a shorter distance involving a fourth section violation. Adjustment should be made with respect to the latter rate. Iowa-Minnesota Cement Rates, 28 I. C. C., 477, 482.

(b) In determining fourth section violations rates of the same character should be compared with one another; proportional rates should not be compared with local rates. Rates on Grain and Grain Products to Texarkana, 29 I. C. C. 35, 36.

(c) In making readjustments same rule or principle should govern as to circuitous versus short routes as apply in like cases to named routes. Fourth Section Violations in the Southeast, 32 I. C. C. 61, 67.

(d) Relief afforded from fourth section should be sufficient to permit carriers to continue to compete for terminal traffic so long as it may be secured at rates that will yield a revenue in excess of operating cost. Commodity Rates to Pacific Coast Terminals, 32 I. C. C., 611, 629.

§13. Reparation.

See Reparation.

(a) It is not the practice of the Commission to award reparation on reducing rates from Pacific coast terminals to points in inter-mountain territory. Maier & Co. v. Southern Pacific Co., 29 I. C. C., 103, 105.

(b) Reparation denied on shipments of bean nut and fish oil from San Francisco, Cal., to El Paso, Tex., up to the time when the Commission passed upon applications under Section 4. Tuttle Paint & Glass Co. v. S. P. Co., Unrep. Op. A-169.

(c) Reparation denied where higher rates to intermediate points were protected by applications on file with Commission, no showing having been made that rates were unreasonable. United States Cast Iron Pipe & Foundry Co. v. N. C. & St. L. Ry., Unrep. Op. A-314.

(d) On shipment of cast-iron pipe and fittings from Chattanooga, Tenn., to Hillsboro, Ill., and Bessemer, Ala., to Mitchell, Ill., no showing being made that higher rates to intermediate points, which were protected by applications filed with the Commission, were unreasonable, reparation denied. United States Cast Iron Pipe & Foundry Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-314.

(e) Rates held to be in violation of section 4, but damages denied because no proof of damage. Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120, 122.

(f) Where a situation is protected by an application for relief from the provisions of the fourth section, which has not been passed upon, and the violation of the rule of that section has been removed, no reparation should be awarded. Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 29.

(g) Rates may be found to be in violation of section four, but damages denied. Chamber of Commerce of Washington v. B. & O. R. R. Co., 30 I. C. C. 446, 453.

(h) Shipments moved before Commission's order denying carriers' fourth section application became effective. Reparation denied. Colorado Chemical & Spray Mfg. Co. v. Indiana Harbor Belt R. R. Co., Unrep. Op. A-613.

(i) Mere fact that rates were in violation of fourth section does not, in absence of proof of damage, afford a basis for an award. Nix & Co. v. S. Ry. Co., 31 I. C. C. 145. 150.

(j) Defendant's tariff provided a proportional rate on corn from Hallville, Ill., to Chicago, when forwarded via lake lines to Buffalo and points east thereof; but same were not applicable to Jenkins and other intermediate points. Reparation awarded. Shaffer & Co. v. I. C. R. R. Co., Unrep. Op. A-735.

LOSS AND DAMAGE.

I. THE CARMACK AMENDMENT.

§1. Constitutionality.

§2. Construction in general.
§2½. The Cummins Amendment
§3. Effect of state legislation.
§4. Jurisdiction of Commission.
§5. Jurisdiction of state courts.
II. CARRIER'S LIABILITY.
§5. Jurisdiction of state courts.
§5½. In general.
§5¾. Assignments.
§6. Initial carrier.
§7. Intermediate carrier.
7½. Inspection.
§8. Delivering carrier.
§9. Agreed or restricted valuation.
§10. Common law liability in general.
(1) Liability for negligence.
§11. Notice of loss.
§12. Settlements and rights inter se.
§13. Special damages.
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III. EVIDENCE.
§13¾. In general.
§14. Acts of connecting carrier.
§15. Burden of proof.
§16. Judicial notice.
§17. Parties and pleadings.

CROSS REFERENCES

See Passenger Fares, §10; Water Carriers, VI.

I. THE CARMACK AND CUMMINS AMENDMENTS.

See Foreign Commerce, §½ (a); Claims, §11 (a); Interstate Commerce, §5 (b).

§1. Constitutionality.

See Constitutional Law.

(a) In a case involving a through shipment, based on a contract between carriers as to rates, the initial carrier cannot raise a moot question as to the constitutionality of the Carmack Amendment as to shipments under the local rates of connecting carriers. C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 104 N. E. 581, 585.

(b) Objections to the constitutionality of the Carmack Amendment, upon the ground that it authorized the forcing of an insolvent intermediate carrier upon the initial carrier, and that it makes a new contract for the initial carrier, are removed by the fact of the initial carrier having itself made the contract as a condition of carriage at all. C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 104 N. E. 581, 585.

(c) The Carmack Amendment is not invalid upon the ground that it makes the initial carrier responsible for the act of God or the public enemy, or for the negligence of another, for by vouching in, or notice, responsibility is fixed where it belongs, and non-liability from the act of God or the public enemy is a defense to any carrier. C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 104 N. E. 581, 586.

(d) Section 20. as amended by the Carmack Amendment, is not invalid as imposing upon the initial carrier costs, expenses and attorney's fees incurred in defending the case or ascertaining where and how the loss occurred, since a carrier delivering a consignment in good condition to a connecting line may by notice to defend, as by vouching in the carrier or carriers responsible for the loss, transfer the expense to the latter, the amount of the loss and the party responsible therefor being fixed at one and the same time. C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 124 N. E. 581, 586.

§2. Construction in General.

(a) Since the Act to regulate commerce and its amendments have gone into effect, cases for loss or damage must be decided in view of the provisions of the commerce act and its requirement that the carrier shall file its tariffs and rates, which shall be open to inspection, and shall prescribe rates applicable to all shippers alike, thus to effect one of the main purposes of the law often declared by this court, to require like treatment of all shippers and the charging of uniform rates equally applicable to all under like circumstances. Pierce Co. v. Wells, Fargo & Co., 35 Sup. Ct. Rep. 351, 353, 236 U. S. 278, 59 L. ed.

(aa) The Carmack Amendment superseded all regulations and policies of the different states relative to the responsibility of a carrier issuing a bill of lading for loss of or damage to freight delivered by it to a connecting carrier. Gamble-Robinson Commission Co. v. Union Pac. Ry. Co. (Ill., 1914), 104 N. E. 666, 668.

(b) By the Hepburn Act of 1906 Congress exercised its authority to regu-

late interstate shipments, and the power of the state with respect thereto was at an end. Ford v. C. R. I. & P. Ry. Co. (Minn., 1913), 143 N. W. 249.

(c) The purpose of the Carmack Act was to fix the liability of interstate carriers, and in so doing to put an end to the diversity of regulation under state laws on the subject. The act of Congress is paramount upon the subject with which it purports to deal, and supersedes all state laws upon the same subject. It follows that, where suit is brought for loss or damage to goods transported in interstate commerce, the rule of liability as prescribed by the federal Act is applicable whether the suit be brought against the initial carrier or against one of the succeeding carriers. A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ga., 1913), 78 S. E. 1019, 1022.

(d) The Carmack Amendment is not involved where a carrier contracts to deliver goods at destination, choosing its own intermediate agents or connecting lines for the purpose. McConnell v. N. Y. Cent. & H. Ry. Co. (N. C., 1913), 79 S. E. 974, 976.

(e) Under the Carmack Amendment the contract of the initial carrier fixes the liability of the parties executing the contract, as well as that of connecting carriers, and where an initial carrier makes a contract for a through shipment, and receives the consideration therefor, any contract procured by a subsequent carrier for shipment over the same route limiting its liability to its own line, is without consideration and contrary to law. A. T. & S. F. Ry. Co. v. Ward (Tex. Civ. App., 1913), 159 S. W. 375, 380.

(f) An action for damages for injury to cattle during interstate shipments, resulting from unreasonable delay and rough handling, must be disposed of under the Interstate Commerce Act and the decisions of the U. S. Supreme Court A. T. & S. F. Ry. Co. v. Ward (Tex. Civ. App., 1913), 159 S. W. 375, 379.

(g) Through the enactment of the Interstate Commerce Act and amendments, including what is known as the Carmack Amendment, Congress has taken complete possession of the subject of liability of carriers by railroad on account of interstate shipments, and such legislation by Congress, and the decisions prevailing in the federal courts with respect to the construction and application thereof, supersede the laws, regulations and policy of any state with respect to that subject. McElvain v. St. L. & S. F. Ry. Co. (Mo. App., 1913), 158 S. W. 464, 466.

(h) Where a shipment is interstate a contract seeking to limit the liability of the carrier must be construed by the provisions of the Carmack Amendment. Pacific Exp. Co. v. Krower (Tex., 1914), 163 S. W. 9, 10.

(i). As to interstate shipments, the Carmack Amendment supersedes a state doctrine, based on a provision of the state constitution that the shipper is not bound by a recital of value in his contract of shipment, but may show and recover his full loss. L. & N. Ry. Co. v. Miller (Ky., 1914), 162 S. W. 73, 74.

(j) By express provision of the Carmack Amendment and the Act of June 18, 1910, the subject of passengers' baggage transported in interstate commerce has been taken over by Congress and is subject to the regulations of the Interstate Commerce Commission, and questions arising thereunder are to be controlled by the decisions of the Supreme Court of the United States. Barstow v. N. Y. N. H. & H. R. R. Co., 143 N. Y., Sup. 983, 990.

(k) The Carmack Amendment is not inconsistent with the rule of evidence that goods received in good order by an initial carrier are presumed to have been received in like good order by the succeeding carrier. Duvall v. L. W. R. R. Co. (La., 1914), 65 So. 104, 105.

(l) The effect of the Carmack Amendment was to give to the federal jurisdiction control over interstate commerce. A. T. & S. F. Ry. Co. v. Robinson, 233 U. S. 173, 34 Sup. Ct. 556; K. C. S. Ry. Co. v. Carl, 227 U. S. 639, 33 Sup. Ct. 391, 57 L. Ed. 683; M. K. & T. R. R. Co. v. Harriman, 227 U. S. 657, 33 Sup. Ct. 397, 57 L. Ed. 690; C. R. I. & P. Ry. Co. v. Cramer, 232 U. S. 490, 34 Sup. Ct. 383, and A. C. L. R. R. Co. v. Thomasville Live Stock Co., 13 Ga. App. 102, 78 S. E. 1019; are authority for the propositions that the shipper, as well as the carrier, is bound to take notice of filed tariff rates, and that so long as they remain in effect they are conclusive

as to the rights of the parties. C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318.

(m) An action for damages resulting from failure of the carrier to furnish cars for the shipment of freight within a reasonable time after the date agreed upon between the shipper and the station agent of the carrier, is not prohibited by the Interstate Commerce Act, as amended June 29, 1906. C. R. I. & P. Ry. Co. v. Beatty (Okla. 1914), 141 Pac. 442.

(n) Where a shipper owning an elevator situated on a switch track loaded a car with corn which the carrier moved to a convenient point for placing in its train, where it was destroyed by fire over night, there is a delivery to the carrier and it is liable for the loss although no bill of lading was in fact issued. The Carmack Amendment, although providing that a bill of lading shall be issued, does not provide that liability shall not attach until issued. Morrison Grain Co. v. M. P. Ry. Co. (Mo., 1914), 170 S. W. 404.

(o) While the Carmack Amendment provides that the carrier should issue a receipt or bill of lading for property received for transportation, it nowhere says the liability of such carrier shall not attach until such bill of lading has been issued. Morrison Grain Co. v. Mo. Pac. Ry. Co. (Mo., 1914), 17 S. W. 404, 407.

(p) The Carmack Amendment does not apply to shipments destined to the same state as they originate in although they pass through another state en route. The purpose and object and the subject-matter of the act being applicable to through shipments it cannot be read into the act that where a shipment originates and the point of destination is within the same state, that because it passes through a point in a foreign state in order to return to the state of origin, such would be transportation from a point in one state to a point in another state. It may be that the same reason inducing the act is also applicable to an interstate shipment, where the origin and destination are in the same state, as where the origin and destination of the shipment are in different states. Wichita & W. Ry. Co. of Tex. v. Asher (Tex., 1915), 171 S. W. 114, 1118, 1119.

(qr) The main purpose and effect of the Carmack amendment was to provide a uniform rule as to the liability of interstate carriers of goods to relieve them from the diverse rules to which they had been heretofore subject, and to supersede all the regulations and policies of a particular state upon the subject. Spada v. Pennsylvania R. Co. (N. J.), 92 Atl. 379, 380.

(s) The validity and effect of the provisions of a shipping contract governing the transportation of an interstate shipment of live stock is to be determined by the Interstate Commerce Act and the decisions of the Federal Courts construing the same. Hunt v. St. L. I. M. & S. Ry. Co., (Mo. 1915), 173, S. W., 61. 62.

(t) By force of the Carmack Amendment, the delivery to, and acceptance by, the shipper of a bill of lading constitutes it a binding contract on his part, so far as the valid provisions thereof are concerned, even if he does not know of the stipulations contained therein, and has not by any act, except the mere acceptance of the bill, signified his assent to them. Spada v. Pennsylvania R. Co., (N. J.), 92 Atl. 379, 381.

(u) Congress has, by virtue of the Carmack Amendment to the Interstate Commerce Act, superseded all state statutes and regulations, and the validity of any stipulation in a contract for an interstate shipment which undertakes to limit the carrier's liability is a federal question, to be determined by the state and federal courts under the rules declared by the federal courts. K. C. & M. Ry. Co. v. Oakley (Ark), 170 S. W. 565, 566.

(v) Under the Carmack Amendment the owner of a damaged shipment can sue the initial carrier alone or any one of the connecting carriers, or all jointly, for the damages. A. T. & S. F. Ry. Co. v. Boyce (Tex.), 171 S. W. 1094, 1097.

(w) The Carmack Amendment does not apply to a shipment from Superior, Wis., to Winnipeg, Man., because such shipment was not from "a point in one state to a point in another state," but from a point in one state to a foreign country, and under such circumstances the Carmack Amendment does not apply. Burke v. Gulf, C. & S. F. Ry. Co. (Mun. Ct., N. Y.), 147 N. Y., Supp. 794; Houston, E. & W. T. Ry. Co. v. Inman et al (Tex. Civ. App.), 134 S. W. 275;

Best v. Great Northern Ry. Co. (Wis. 1915), 150 N. W. 484, 485.

(x) The Carmack Amendment merely places the shipper in a position where he may be able to recover for injured property and relieve himself, oftentimes, from the task of locating the active tortfeasor. But if the shipper knows which one among a number of carriers caused the injury, he may sue that one alone. Galveston Ry. Co. v. Piper, 52 Tex. Civ. App. 568, 115 S. W. 107; Otrich v. Ry. Co., 154 Mo. App. 420, 134 S. W. 665; McMillan v. C. R. I. & Pac. Ry. and G. N. Ry., 147 Iowa, 596, 124 N. W. 1069; Tradewell v. C. & N. W. Ry., 150 Wis. 259, 136 N. W. 794; Storm Lake Tub & Tank F. v. M. & St. L. Ry. (D. C.), 209 Fed. 895; Uber v. C. M. & St. P. Ry., 151 Wis. 431, 138 N. W. 57; Elliott v. C., M. & St. P. Ry. Co. (So. Dak. 1915), 150 N. W. 777, 778, 779.

(y) By the proviso in the Carmack Amendment that "nothing in this section shall deprive any holder of such * * * bill of lading of any remedy or right of action which he has under existing law," the remedy and right of action thereunder are made concurrent with the remedy and right of action under the general law then existing. Any other construction will wholly destroy and nullify this proviso. But for the existence of this proviso it might, with some reason, be contended that the shipper's remedy and right of action was also exclusively controlled by the interstate commerce act as amended; but this proviso is as much a part of the interstate commerce act as any other part thereof. By this proviso the distinction between what is purely abstract liability, or substantive cause of action, and what is purely remedy and right of action is clearly recognized. Right of action and substantive liability, or cause of action, may erroneously be confounded. The meaning of the expression "right of action" as used in this proviso must be determined in the light of the company in which it is found, viz., "remedy or right of action." The maxim, "Noscitur a sociis," is applicable. 36 Cyc. 1118. "Right of action" is one thing; "cause of action" is another. Right of action pertains to remedy and relief through judicial procedure. Cause of action is based on the substantive law of legal liability. 1 Am. & Eng. Ency. of Law & Prac. 1038; 1 R. C. L. 313; Pomeroy's Remedies, §§ 346-353; 1 Cyc. 642. Elliott v. C. M. & St. P. Ry. Co. (So. Dak. 1915), 150 N. W. 777, 779.

(z) Section 9 of the Interstate Commerce Act does not have reference to actions brought under the Carmack Amendment. Bichlmeir v. Minneapolis, St. P. & S. S. Ry. Co. (Wis. 1915), 150 N. W. 508, 509.

(aa) The Congress of the United States has, by section 20 of the Interstate Commerce Act of 1887, as amended by the "Carmack Amendment," legislated directly upon the carrier's liability for loss of or damage to interstate shipments; and this legislation supersedes all regulations and policies of this state upon the same subject. W. H. Mitchell & Co. v. A. C. L. R. Co. (Ga. 1915), 84 S. E. 227.

(bb) Since the Carmack Amendment the validity of any stipulation in a live stock contract must be determined by the federal laws. Armstrong v. I. C. R. Co. (Ky. 1915), 172 S. W. 947, 948.

(cc) The Hepburn law, and the Carmack Amendment of 1906 manifest a purpose on the part of Congress, as has been frequently held by the United States Supreme Court, to take exclusive control of interstate commerce, including the liability of a common carrier for loss or damage to an interstate shipment, and to supersede all state legislation, upon the same subject, including provisions of state constitutions, or laws invalidating contracts limiting the carriers liability to agreed values. Adams Express Co. v. Cook (Ky. 1915), 172 S. W. 1097.

(dd) The Interstate Commerce Act and its amendments have complete and exclusive possession of the subject of the liability of the carriers of interstate commerce and that this legislation must be interpreted and applied by state courts in conformity with the decisions of the federal courts. Dunlap v. Chicago & A. Ry. Co. (Mo. 1915), 172 S. W. 1178, 1179.

(ee) The Carmack Amendment supersedes all state laws in regard to interstate shipments. San Antonio & A. P. Ry. Co. v. Bracht (Tex. 1915), 172 S. W. 1116.

(ff) The Carmack Amendment does not invalidate an oral contract for the shipment of livestock. Gulf C. & S. F. Ry. Co. v. Vasbinder (Tex. 1915), 172 S. W. 763, 765.

(gg) The Carmack Amendment is in effect only for the purpose of enabling the shipper to obtain redress from the initial carrier for any breach of the original contract of shipment regarded as the through contract and does not cover damages arising from the breach of a new contract entered into at destination and after arrival of the goods, between the shipper and the delivering carrier. Wien v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp., 154, 158.

(hh) The liability of the initial carrier under the Carmack Amendment ends when the liability of the final carrier as a warehouseman commences. Wien v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp. 154, 158.

(ii) Where damages resulted from the failure of the final carrier to return property refused by the consignee as requested by the shipper who accepted the suggestion from the carrier's agent and took upon himself the negotiations of the agent with the final carrier for the return of the consignment, the initial carrier is not responsible under the Carmack Amendment. Wien v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp., 154, 159.

(jj) The Carmack Amendment supersedes decisions of the states concerning the validity of provisions in a bill of lading on interstate shipments. Henry v. C. M. & P. S. Ry. Co., (Wash. 1915). 147 Pac., 425, 430.

(kk) Damages sustained by a shipper by reason of the failure of the delivering carrier to return a shipment as requested after the original transportation had ended is not such damage or injury as is covered by the Carmack Amendment so as to make the initial carrier responsible for the ensuing loss. Wien v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp., 154, 159.

(ll) The prime, if not the only purpose of the Carmack Amendment was to make the initial carrier receiving property for interstate transportation liable to the lawful holder of a receipt or bill of lading issued therefor on account of any loss, damage, or injury to such property caused by it or by any other common carrier over whose lines the same might pass. Prior to that time the shipper or consignee was put to the trouble and expense of attempting to locate among those composing the through line of movement the particular carrier responsible for any loss or damage occurring to the shipment and of endeavoring to collect from it. It was generally difficult and often impossible to definitely ascertain the particular carrier in the through line which had caused the loss or damage, and it was the adequate opportunity afforded under these conditions for enforcing justice that led to the enactment of this amendment of the law. It did not undertake directly to prescribe or limit the conditions or provisions of the bill of lading but operated to render void to the extent stated any attempted limitation of the liability of the initial carrier to the shipper. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C. C. 511, 512.

(mm) Under the Carmack Amendment, the initial carrier would have been liable, not only for the negligent acts and omissions of its employes, but for those of connecting carriers resulting in any loss or damage to the goods en route and also for any loss or damage resulting from the failure of the final carrier to notify the consignee of the arrival of the goods at destination, and for its failure, on the consignee's refusing to accept them, to store the goods for the account of the shipper or to exercise proper care in holding them for him. Adam's Express Co. v. Croninger, 226 U. S., 491, 33 Sup. Ct., 148, 57 L. Ed., 314, 44 L. R. A., (N. S.), 257; Kansas City Southern Ry. Co., v. Carl, 227 U. S., 639, 33 Sup. Ct., 391, 57 L. Ed., 683; Galveston, H. & S. Ry. Co. v. Wallace, 223 U. S., 481, 32 Sup. Ct., 205, 56 L. Ed., 516; Atlantic Coast Line Ry. v. Riverside Mills, 219 U. S., 186, 31 Sup. Ct., 164, 55 L. Ed., 167, 31 L. R. A. (N. S.),7; Becker v. Pa. Ry. Co., 109 App. Div., 230, 96 N. Y. Supp., 1; Earnest v. D. L. & W. R. Co., 149 App. Div., 330, 134 N. Y. Supp., 323; Coovert v. Spokane, P. & S. Ry. Co., 80 Wash. 87, 141 Pac., 324; Norfolk & W. R. Co. v. Stuart Draft Co., 109 Va., 184, 63 S. E., 415. Wien v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp., 154, 156.

(nn) There can be no doubt that Congress has by the Carmack Amendment to the Hepburn Act (Interstate Comemrce Act, Sec. 20) taken possession of the subject of the liability of a common carrier for loss or damage to an interstate shipment and that the validity of any stipulation in a contract for an interstate shipment is a federal

question be determined by the federal and state courts under the general common law as pronounced by the federal courts. Lynch v. N. Y. C. & H. R. R. Co., 153 N. Y. S. 633, 636.

(oo) On February 8, 1912, plaintiff delivered to the defendant a case of merchandise, consisting of dresses or gowns and consigned to People's Store at Coffeyville, Kans., the shipment being routed over the Santa Fe Railroad. It was conceded on the trial that the goods arrived at their destination within a reasonable time, that the consignee was promptly notified of their arrival, that the consignee in due time notified the agent of the Santa Fe that it refused to accept the shipment, and that notice of this fact was not given to plaintiff until hereinafter stated. On or about April 24th, plaintiff received a letter from consignee saying that it refused to accept the goods. On April 26th plaintiff showed this letter to defendant's agent in this city, and in reply to his query as to what he should do to get his goods back "by the next express" plaintiff was told to sign a return order. Having signed such an order, plaintiff was informed by the agent that defendant would have to communicate with its agent in Chicago, who in turn would take the matter up with the Santa Fe agent at Coffeyville, and that it would probably take a week or more to get the goods back, but that, if plaintiff would go to the office of the Santa Fe in this city, he would find it had a direct wire to Coffeyville and could get the shipment back in three days. On this suggestion, plaintiff went to the office of the Santa Fe and explained the situation, saying at the same time that if he could get the goods back in three days, he could sell them for their full value, but otherwise the season for their sale would be lost. The agent of the Santa Fe agreed to telegraph to Coffeyville, and ascertain whether the goods were still in possession of his company, and, if so, he promised to have them returned at once by express. On May 3d plaintiff was notified by the Santa Fe agent that the package had been delivered to the consignee on March 28, 1912. Having again communicated with the consignee, plaintiff was told that the goods had not been accepted, of which fact plaintiff informed the Santa Fe agent, and was again told that the goods had been delivered to the consignee on March 28th. Later the Santa Fe's representatives discovered this was a mistake, and about May 20th, they informed plaintiff of their error, that the case had never been delivered and was still in their possession. Thereupon plaintiff declared that he had lost his market for the sale of the goods and demanded reparation from the Santa Fe. The goods were finally returned to plaintiff, but at his expense, and were sold at a considerable loss, for which this action was brought. HELD, that the initial carrier was not liable under the Carmack Amendment since its liability ended when that of the final carrier as warehouseman commenced. Wien v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp., 154, 159.

§2½. The Cummins Amendment.

(a) The effect of the Cummins Amendment to Section Seven enacted March 4, 1915, in lieu of the Carmack Amendment of June 29, 1906, upon lawful rates under existing tariffs, being in grave doubt, the Commission considered the matter with a view to a tentative expression of opinion. The several classifications provided in general two rates, a lower one applicable where property was shipped on uniform or standard bills of lading limiting liability to the declared value, and a higher rate averaging 10 per cent where the carrier's liability was limited only as provided by the common law or statute. Some carriers contended that if no changes were made in the classifications the lower rates would be automatically cancelled and the higher rates would be alone lawful after June 2, 1915, when the Cummins Amendment became effective; while some shippers insisted that all provisions limiting liability would in that event become void and the shipper might then take advantage of the lower rate free of limitation. Carriers while admitting that a 10 per cent increase was not justified, announced the purpose of increasing rates to meet the emergency. The most important questions arising were: (1) If no changes were made in existing shipping contracts and rate schedules, would the higher rates provided therein become automatically effective; (2) Might carriers lawfully provide that their liability should be for full value of property at time and place of shipment; (3) Did the Cummins Amendment apply to export and import shipments to and from non-adjacent foreign countries; (4) In the proviso, "if the goods are hidden from

view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods," what was the proper interpretation to be placed on the latter clause; and (5) do the terms of the amendment apply to transportation of baggage; HELD (1) that the Cummins Amendment did not automatically apply the increased rates named in the classifications and tariff publications to shipments not made subject to uniform or carrier's bill of lading; (2) liability of carrier might be limited to full value of property as classified and established as of time and place of shipment; (3) the amendment did not apply to export and import shipments to and from non-adjacent foreign territory; (4) when the entire proviso was considered, the meaning of the clause, "and the carrier is not notified as to the character of the goods" seemed to be that if the qualities affecting the value of the goods were hidden from the carrier's view, or not known to the carrier, the proviso applied. HELD, FURTHER, that bills of lading and shipping contracts should be at once amended by eliminating unlawful provisions, no such amendment to have the effect of increasing any rate or charge. The Cummins Amendment afforded no justification for any increase on commodities in general. The Cummins Amendment, 33 I. C. C., 682, 683.

(b) The purpose of the Cummins Amendment is, except as otherwise provided therein, to invalidate all limitations of carriers' liability for loss, damage, or injury to property transported caused by the initial carrier or by another carrier to which it may be delivered or which may participate in transporting it. The law does not specifically say that attempts so to limit the carrier's liability shall not be resorted to, but it declares them to be invalid and unlawful wherever found and in whatever guise they may appear. Neither bills of lading or other contracts of carriage, or classifications or rate schedules should contain any provision so declared unlawful. The Cummins Amendment, 33 I. C. C. 682, 687.

(c) The Cummins Amendment is not a separate statute, but is an amendment to the act. It must, therefore, be construed as a part of, and in connection with other portions of the act, and in such a way as to give effect to the whole statute. There does not seem to be any indication of legislative intent to change any provision of the act other than that part known as the Carmack Amendment. The new amendment should, if possible, be so construed as to give full force to its clear purpose, without impairing the effect of any other provision of the act. The Cummins Amendment, 33 I. C. C. 682, 692.

(d) It is contrary to all canons of construction to hold that an act of Congress produces a result not intended by Congress unless the express language of the act compels such a construction. There is nothing in the expressed terms of the Cummins Amendment or in the history of this legislation that shows any intent or purpose on the part of Congress to affect in any degree the existing rates charged by carrier for transporting property. The legislation is aimed at specified contracts and declares them to be unlawful. The lawful rates on file at this time, therefore, are the rates providing for the limited liability. The Cummins Amendment, by making contracts limiting liability for loss caused by the carriers unlawful, does not destroy these rates, but they remain in effect and are lawfully applicable, for the 10 per cent increased rates are merely addtional and cannot stand in and of themselves. The Cummins Amendment, 33 I. C. C., 682, 692.

(e) The Cummins Amendment clearly places upon the carriers, liability for the full actual loss, damage, or injury to the property transported which is caused by them, and it makes unlawful any limitation of that liability, or of the amount of recovery thereunder, in any receipt, bill of lading, contract, rule, regulation or tariff filed with this Commission, without respect to the manner or form in which such limitation is sought to be made. The loss or damage must, apparently, be either as of the time and place of shipment, time and place of loss or damage, or time and place of destination. Where rates are lawfully dependent upon declared values the property and the rates are classified according to the character of the property, and of which the value of the property may constitute an element, and such classification is necessarily as of the time and place of shipment. It is therefore believed that the liability of the carrier may be limited to the full value of the property so classified and established as of the time and place of ship-

ment. The Cummins Amendment, 33 I. C. C., 682, 693.

(f) The Cummins Amendment does not apply to export and import shipments to and from foreign countries not adjacent to the United States. The Cummins Amendment, 33 I. C. C., 682, 693.

(g) The right of the carrier to initiate its rates and to consider value of the property tendered for transportation as an element in determining the classification thereof or the rate applicable thereto has not been denied by the Carmack Amendment or withdrawn by the Cummins Amendment. The right in certain instances to make varying rates upon a given article or commodity dependent upon its true value being recognized, and it being impossible for the carrier's agent to know the true value of the shipment unless it is declared by the shipper, and in view of the fact that the ordinary name of the commodity is essential to the application of any transportation rate whatsoever, it seems that the word "character" as used in the provision in the Cummins Amendment relative to shipments where "the goods are hidden from view by wrapping," etc., must include the true and actual value as stated by the shipper. The word "character" as here used clearly relates primarily to value, or those qualities affecting value, and when the entire proviso is considered the meaning seems to be that if the qualities affecting value of the goods are hidden from the carrier's view, or are not known to the carrier, the proviso applies. It is a well settled rule of statutory construction that the word "and" may be read as "or" in deference to the meaning of the context. If the word "and" in the provision is read as "or", the meaning is reasonably clear, whereas if the letter of the statute is adhered to the meaning is doubtful and difficult to determine. The Cummings Amendment, 33 I. C. C., 682, 694.

(h) In these instances in which the carrier desires to limit its liability to the value of the property as specifically stated in writing by the shipper, the rate must be based upon the declared value and be so published; but the Commission apparently must determine in advance of such publication that the commodity is one the value of which cannot be known to the carrier from ordinary sources or reasonable inspection, and to which rates based on declared value may be applied in connection with which the carrier's liability is limited to the value so declared. In determining that question the inquiry is, whether or not the commodity is one the value of which is peculiarly within the knowledge of the shipper. If it has a definite market value or its value depends upon facts of which the carrier has equal knowledge with the shipper, the "character" of the shipment is known to the carrier, and the proviso does not apply. The Congress did not affirmatively recognize any rates based upon declared value other than those authorized by this proviso. This, of course, does not mean that commodities may not be reasonably classified according to value and be subject to different rates applicable to different grades of the same commodity, which is a different matter from limiting the liability to the declared value. The Cummins Amendment, 33 I. C. C., 682, 695.

(i) When the goods are not hidden from view, and the carrier is advised as to their character, all contracts or agreements purporting to limit the liability of the carrier for loss or damage caused by it are made void. A carrier, after the Cummins Amendment goes into effect, may not contract to limit its liability for loss or damage caused by it to the property. There is, however, no inhibition as to the limitation of the liability of a carrier for losses not caused by it or a succeeding carrier to which the property may be delivered. The amendment has expressly reapplied the limitation of the prior act with respect to loss or damage caused by the carriers chargeable therewith. It follows, therefore, that the interpretation applied to the act before it was amended is equally applicable to the amendment in so far as the latter affects the right of a carrier to establish rates conditional upon the shipper's assumption of the entire risk of loss attributable to causes beyond the carrier's control. From this it follows that under the amendment a contract or a tariff may lawfully limit to a reasonable maximum the liability of a carrier for losses which it does not cause. It follows further that the rates provided by such tariff may be proportionate to the risk assumed. The Cummins Amendment, 33 I. C. C., 682, 695.

(j) The provision of the Cummins

Amendment as to the goods concealed from view of the character of which the carrier is not advised clearly prescribes the right of carriers under the direction or approval of the Commission to provide for a graduation of rates in accordance with the declared value of the property transported. The liability provided by the rates so established by the Commission is applicable no less to instances of loss or damage chargeable to the negligence of the carrier than to those occasioned by causes beyond the carrier's control. But the carriers may not contract to limit their liability for loss, damage, or injury caused by them to property the character of which is manifested by the shipment itself or otherwise disclosed. The Cummins Amendment, 33 I. C. C., 682, 696.

(k) Carriers are not prohibited from making different rates dependent upon the value of different grades of a given commidity. Except as covered by the Cummins Amendment, including approval of the rates by the Commission, the carrier is subject to all of the liabilities imposed by that amendment; and if, in any instance, the shipper declares the value to be less than the true value in order to get a lower rates than that to which he would otherwise be entitled, he violates, and is subiect to the penalty prescribed in section 10 of the act. The carrier would also be subject to the same penalty in such a case if, having knowledge that the value represented is not the true value, it nevertheless accepts the shipper's representation as to value for the purpose of applying the rate. The Cummins Amendment, 33 I. C. C., 682, 696.

(l) Where the rates are lawfully based upon declared values the difference in rates should be no more than fair and reasonably represents the added insurance. The Cummins Amendment, 33 I. C. C., 682, 697.

(m) Complainants attacked as unreasonable and unlawful defendants' rules and regulations governing the shipment of live stock under shipping contracts restricting the carriers' liability for loss or damage to certain specified amounts, and defendants' rates for valuations in excess of the amounts so specified. The territory served by the carriers in which these rules, regulations, and rates were in force may be described in general as that portion of the United States west of Chicago, Ill. The tariffs, bills of lading, and shipping contracts of defendants provided two sets of rates for the shipment of live stock in carloads, viz: (1) Rates subject to the condition that in case of loss or injury in transit the carrier shall not be liable in excess of the valuations there scheduled for the several kinds of animals; (2) higher rates, free from such condition, when higher values are declared by the shipper.

The main questions presented by the record for determination were: Whether or not the provisions for released rates are unjust, unreasonable, and unlawful in that the valuations scheduled are unreasonably low, not representative of the fair actual values and mere arbitrary limitations of the amount of recovery; and whether or not the rates for live-stock shipments of excess value are unjust, unreasonable, and unlawful. Since that record was made up the Cummins amendment, has in effect abolished in interstate commerce the whole system of released rates based on agreed valuations as distinguished from actual value, thus removing from consideration the first of these two main qustions except in so far as it involves determination of the reasonableness of the scheduled valuations as representing actual values and thus as a basis for rates in the future.

The scheduled valuations as shown by the record were as follows:

Each horse or pony (gelding, mare, or stallion), mule, jack or jenny	$100
Each colt under 1 year	50
Each ox, bull, or steer	50
Each cow	30
Each calf	10
Each hog	10
Each sheep or goat	3

Presumably in view of the Cummins amendment, supplement No. 5 to western classification No. 53, I. C. C. No. 11, stated that, effective June 4, 1915, "minimum ratings given below are based upon values declared by shippers, not exceeding the following contract." The values specified were, for the respective animals, the same as those given in the foregoing table. Of the total live-stock tonnage handled in the territory here concerend, 99 per cent is estimated by witnesses for complainants to consist of the ordinary run of animals. Complainants admitted that in making rates a distinction may properly be made between such animals and "blooded stock" of the same species. Rates or regula-

tions affecting the transportation of the former are alone in issue. The tariff provisions as to valuation and the values above set forth are made a part of the shipping contracts in use by the carriers. They have been a part of the rate structure for many years. The record does not show when they were adopted, as the witnesses, some of them men well along in years and of lifelong experience in stock raising and shipping, could not recall the time when they were not in effect. Certain it is that such contracts have been made upon the basis of these valuations for 30 years and more. Nor does the record show why the values were originally fixed at these figures. The defendants, introduced no evidence, but stated such value "was intended to be the maximum value upon which the minimum rate was fixed." Many witnesses for complainants testified that the values, up to perhaps 15 years ago, represented the fair average value of the different animals. Prior to the early part of 1913 the carriers throughout the livestock producing territory involved were accustomed to disregard these limited valuations in the settlement of claims made for the loss of, or injury to, animals in transit. Those states in which the live-stock business is important have quite generally held the carriers to full liability for the actual loss or injury in transportation. And where any limitation of value has been permitted, the rule has been that the contract valuation must be fairly related to the actual value and not arbitrary. But with few exceptions the courts in those states held that the contract limitation of liability was void and that the measure of the carrier's liability was the actual loss sustained. This was so both before and after the so-called Carmack Amendment of 1906 to the act to regulate commerce.

On January 6, 1913, the Supreme Court of the United States, in the case of Croninger v. Adams Express Co., 226 U. S., 491, construed the Carmack amendment and held that under contracts for transportation which limit liability, as do those here in question, the shipper can not recover in excess of the valuation specified in the contract. This doctrine was followed in C. B. & Q. Ry. Co. v. Miller, 226 U. S., 513; C. St. P. M. & O. Ry. Co. v. Latta, 226 U. S., 519, M. K. & T. Ry. Co. v. Harriman, 227 U. S., 657; and C. R. I. & P. Ry. Co. v. Cramer, 232 U. S., 490, these cases involving, respectively, attempts on the part of shippers to recover the full value (1) of a stallion, (2) of 2 horses, (3) of 4 bulls and 13 cows, and (4) of 60 hogs shipped in interstate commerce at the lower of alternative rates based on agreed valuations, and lost or injured through the negligence of the carriers. Since these decisions the defendant carriers in settling such claims have complied with the act to regulate commerce, refusing to pay more than the contract limit. Under the rule in the Croninger case, supra, the amounts paid in settlement of claims for loss of live stock are frequently much less than actual value. In such cases the shipper loses the difference. Where the actual value is less than the contract limit the shipper, of course, is protected, but the carrier has never been liable for more than the actual value.

During the last 30 years the averge value of live stock has greatly increased. The increase in some grades reaches 100 per cent. A large part of the live-stock shipments now made greatly exceeds in average value the contract limit of valuation. But there is a substantial movement of live stock which averages in value less than the contract limit. The Commission has frequently been called upon to prescribe reasonable rates on live stock. In such cases the element of loss and damage has been urged by the carriers and considered by it.

The record is clear that the average values of these different kinds of live stock at the present time are greatly in excess of the valuations named in the contracts. Indeed, as to some the minimum actual value is probably in excess of the contract maximum. Moreover, animals from certain sections of the country are more valuable than like animals from other sections, owing to market demand and to grazing or feeding conditions at the place or origin. Complainants contended that if any maximum value be placed on steers it should be fixed at $120, and the representative of Iowa interests said in substance that they wanted this or nothing, as it is the fair average value of Iowa steers. The percentage of increase in rate for excess value has varied from 10 to 25 per cent of the released rate for each 100 per cent or fraction thereof of excess value. These excess rates for excess value have seldom been used. It has long been the claim of the carriers that the amounts paid by them for loss

and damage incident to the transportation of live stock are disproportionately high as compared with the loss and damage claims incident to the transportation of other freight. It does not appear, however, that all such claims are affected by these particular contracts. A large proportion—perhaps 85 per cent in amount—is on account of loss of market and incidental shrinkage in weights and value of the live stock. Such losses never do and never can equal the valuations named in the contracts. Only about 15 per cent of the total claims paid by the carriers for loss of or injury to live stock are, therefore, in any way affected by the rules and regulations here in issue. The amount of money actually paid by these defendants because of such loss or injury does not average more than 25 cents per car. During the last two years long established insurance companies have entered the business of insuring shipments of live stock in transit. Their policies protect against loss by death or other total loss in excess of the legal liability therefor of the railroad or carrier caused by wreck, derailment, fire, or lightning while on cars in transit. The rates of thes companies are 50 cents per single-deck and 75 cents per double-deck car, and the indemnities specified are $50 for each steer, $30 for each cow, $10 for each calf, $10 for each hog, and $5 for each sheep or goat. The insurance rates are flat rates per car, regardless of whether the haul be long or short. For an additional premium of 25 cents or 50 cents per car, making in all 75 cents or $1 per car, the indemnity on steers is made respectively, $75 or $100 per head. While there are no statistics of such insurance operations before us, the testimony as to the amounts paid for commissions and overhead expenses would indicate that the business is profitable. It is of record here that the average haul of live stock in the United States pays the carriers about $50 per car in freight charges. The defendants did not contend that the excess rates charged on account of excess value were reasonable, and they offered another schedule of rates in lieu thereof. The offer is in substance that for a 3 per cent excess rate the carrier will assume a 50 per cent excess liability, and that for a 5 per cent excess rate the carrier will assume a 100 per cent excess liability. These figures are not based upon the cost of additional insurance alone. They rest also upon the theory that the carrier's service on the higher valued animals is a more valuable service and should be compensated by a higher rate. On March 4, 1915, Congress passed what is known as "the Cummins amendment" to section 20 of the act to regulate commerce. The amendment was construed by the Commission in The Cummins Amendment, 33 I. C. C. 682. In that report the Commission said, page 697: "Where rates are lawfully based upon declared values the difference in rates should be no more than fairly and reasonably represents the added insurance." This statement should be read in connection with the sentence which precedes it in that report. The carrier only "insures" the property which it receives for transportation. It is, strictly speaking, not an insurer at all, but a bailee for hire which, in that capacity, has statutory as well as common-law obligations for the safety of property commited to its charges. Cases may arise where elements other than the amount of damages which might be recovered, as, for example, the degree of care required and the whole of the service to the shipper, would have a substantial bearing upon the reasonableness of rates graded according to value, as well as of other rates. Applying the principles enunciated in The Cummins Amendment, supra, modified as indicated above, to the present record, it is HELD (1) that, taking each class of animals by itself and making due allowance for the minimum, maximum, and average values of each as shown by this record, the scheduled valuations carried by these defendants in their live-stock shipping contracts are unjustly and unreasonably low and not representative of the average actual values of the animals shipped thereunder; (2) that defendants' rates for the transportation of any animal specified in the following table, the actual value of which does not exceed the following amount, to wit:

Each horse or pony (gelding, mare or stallion), mule, jack or enny	$150
Each colt, under 1 year	75
Each ox, bull, or steer	75
Each cow	50
Each calf	20
Each hog	15
Each sheep	5

are, and will be for the future, unreasonable to the extent that such rates exceed the present rates based upon the present scheduled valuations set out on

page 81 of this report; (3) that defendants' excess rates for excess valuations are unjustly and unreasonably high; (4) that reasonable rates for the transportation of any animal of actual value exceeding the amount specified in the foregoing table will exceed said present rates by not more than 2 per cent of said present rates for each 50 per cent or fraction thereof of actual value over and above that named in said table. Iowa R. R. Commrs. v. A. T. & S. F. Ry. Co., 36 I. C. C. 79.

§3. Effect of State Legislation.

See State Regulation.

(a) The effect of the Carmack Amendment was to give to the Federal jurisdiction control over interstate commerce, and to make supreme the Federal legislation regulating liability for property transported by common carriers in interstate commerce. A. T. & S. F. Ry. Co. v. Robinson, 34 Sup. Ct. 556, 558; 233 U. S. 173, 58 L. ed.—.

(b) With respect to the specific effect of the Carmack Amendment, it has been held, in a series of recent cases, that the special regulations and policies of particular states on the subject of the carrier's liability for loss or damage to interstate shipments, and the contracts of carriers with respect thereto, have been superseded. M. K. & T. Ry. Co. v. Harris, 34 Sup. Ct. 790, 793; 234 U. S. —, 58 L. ed. —.

(c) A consignee brought action against the terminal carrier of an interstate shipment to recover the penalty provided by state statute (Civil Code, 1912, §2572) for failure to pay the damages to the shipment or trace it and inform the consignee when, where and by what carrier it was damaged, within 40 days after notice thereof. Defendant admitted liability for the penalty if the statute was not in conflict with the Carmack Amendment. HELD, that if the owner finds it to his advantage to pursue the carrier who actually lost or damaged his goods, the same not being the initial carrier, it is as necessary now as it was at the time of the adoption of the Carmack Amendment that he have the information which the state statute requires the carrier to furnish and that the penalty can be recovered as such state statute is not in conflict with the Carmack Amendment because it relates to different carriers than that law. DuPre v. C. N. & L. Ry. Co. (S. C., 1913), 79 S. E. 310.

(d) The effect of the Carmack Amendment is not such as to prevent a consignee from recovering a penalty provided by a state statute for failure on the part of the carrier to adjust a claim for loss of goods within 40 days after such claim has been filed with the carrier's agent. Stukes v. Southern Expr. Co. (S. C., 1914), 80 S. E. 612.

(e) Plaintiff shipped 130 head of cattle, under a through bill of lading, from Sandy Point, Tex., to Manford, Okla., over the line of the I. & G. N. Ry. Co. and connecting carriers. The cattle were damaged through the negligence of the connecting carriers. Subsequently the property and franchises of the initial carrier were sold to defendant in foreclosure proceedings, free of all debts of the initial carrier except certain prior mortgages. Under a Texas statute the purchaser of a sold-out road took the property and franchises thereof charged with a liability for damages to property sustained in or caused by the operation of the physical property of such road. HELD, that while the initial carrier was liable under the Carmack Amendment, defendant in purchasing its property and franchises under the state act did not become so, such statute not being intended to embrace an indirect or constructive liability of this kind. Judgment for defendant affirmed. Hudgins v. I. & G. N. Ry. Co. (Tex. Civ. App., 1914), 162 S. W. 1016.

(f) A State statute allowing a reasonable attorney's fee of not over $20 to the successful plaintiff in an action in which an attorney is actually employed, to recover upon a claim not exceeding $200 not paid within 30 days after demand, for services rendered, material furnished, stock killed or injured, or for overcharges on freight or express or for lost or damaged freight, is not void as conflicting with the Carmack Amendment; since such State statute neither enlarges nor limits the responsibility of the carrier for the loss of property intrusted to it, and only incidentally affects the remedy for enforcing that responsibility, imposes not a penalty but a compensatory allowance for the expense of employing an attorney, and, in fact and effect, merely

authorizes a moderate increment of the recoverable costs of suit in the large class of cases within its scope, among which are only incidentally included claims for freight lost or damaged in interstate commerce. M. K. & T. Ry. Co. v. Harris, 34 Sup. Ct. 790, 793; 234 U. S. —; 58 L. ed. —.

(g) Certain cotton was shipped over the S. Ry. from Corinth, Miss., to points in North Carolina, on a bill of lading which was assigned to plaintiff. On delivery a shortage was discovered, though the identity of the shipment was admitted; whereupon plaintiff brought suit under Miss. Code of 1906, §4851, making the issuer of a bill of lading in the hands of a bona fide holder conclusive as to the weights. HELD, that this case, identical in facts with St. L. & S. F. R. R. Co. v. Woodruff Mills, 62 So. 171, is controlled by the Carmack Amendment and the decision of the federal Supreme Court construing the same, and the provisions of section 4851 of the Code do not apply. S. Ry. Co. v. North Shore Cotton Co. (Miss., 1914), 64 So. 965.

(h) The main purpose and effect of the Carmack Amendment was to provide a uniform rule as to the liability of interstate carriers of goods to relieve them from the diverse rules to which they had been theretofore subject, and to supersede all the regulations and policies of a particular state upon the subject. Spada v. Pennsylvania R. R. Co. (N. J., 1914), 92 Alt. 379, 380.

(i) A state statute imposing a penalty of $50.00 on a common carrier for failure to adjust a claim for damages within 90 days on a shipment made within the state and within four months in case of shipment from without the state, is rendered inapplicable by a rule of the Interstate Commerce Commission, providing that a carrier must dispose of a claim within six months. Morphis v. Southern Express Co. (N. C., 1914). 83 S. E. 1.

(j) The Carmack Amendment to the Hepburn Act as construed by the Supreme Court of the United States supersedes and excludes state laws and policies from the field of the liability of carriers growing out of interstate shipments. Bailey v. M. P. Ry. Co. (Mo., 1914), 171 S. W. 44, 45.

(k) The Carmack Amendment supersedes all the regulations and policies of a particular state upon the same subject; it embraces the subject of the liability of the carrier under a bill of lading which he must issue and limits his power to exempt himself by rule, regulation, or contract, and then when congress has acted in such a way as to manifest a purpose to exercise its conceded authority, the regulating power of the state ceases to exist. Thomas Bros. v. St. L. & S. F. R. Co. (Mo. 1915.), 173 S. W., 96, 99.

§4. Jurisdiction of Commission.

See Bills of Lading, §1 (c).

(a) Claims arising from loss, damage, or delay to shipments in transit, are cognizable in the courts. Atlas Portland Cement Co. v. L. V. R. R. Co., 32 I. C. C. 487, 488.

(b) Commission not authorized to determine whether all damage to shipment of shingles was caused by act of principal defendant in reloading into two open cars. Red Cedar Shingles Mfrs. Asso. v. M. &. St. L. R. R. Co., Unrep. Op. A-880.

II. CARRIER'S LIABILITY.

§5. Jurisdiction of State Courts.

See Courts.

(a) A consignment of nickel matte was shipped from a French port to the port of New York. Plaintiff's custom-house brokers made the necessary entry of the goods and executed a delivery order directing the steamship to deliver the matte to the American Express Co. Their messenger boy, by mistake, delivered the order to the Adams Express Co., by whose employes the word "American" was stricken out and "Adams" substituted. The Adams Express Co. thus obtained possession of the goods, transported them to New Brunswick, N. J., where the charges were paid by plaintiff under protest. HELD, that plaintiff might properly resort to a state court to recover the express charges paid, not being required to seek relief before the Commission or a federal court, since defendant, having without authority, assumed the responsibility of making the shipment, the relation of shipper and carrier did not exist. U. S. Nickel Co. v. Barrett (1914), 148 N. Y. S. 325, 328.

(b) A petition alleged in substance as follows: The plaintiff purchased a carload of hogs and caused them to be

shipped from Kelso, Tenn., to Atlanta, Ga. The hogs could have been shipped in a car 36 feet long, for which the tariff rate as published by the carriers, between those points was $53.00. The vendor ordered a car of that length for the purpose of the shipment. Under the tariff schedule, the carriers reserved the right, for their own convenience, to furnish a longer car than that called for or required by shippers. In that event the rate of the freight is the price of the car called for, when such car is sufficient to carry the shipment. The first carrier, the Nashville, Chattanooga & St. Louis Ry., for its own convenience, instead of furnishing a car 36 feet long (which would have been sufficient) furnished one 38 feet long, and this fact was duly noted on the bill of lading. The freight was prepaid, and this fact was also entered. When the car arrived at destination, the last carrier, the defendant, refused to deliver the hogs without the payment of an additional amount of $2.65, though notified of the facts by the plaintiff, and against its protest; and thereby damage resulted. HELD, that a state court had jurisdiction of such suit to recover damages for the alleged tort; and an application to and investigation by the Interstate Commerce Commission were not necessary before beginning such an action. Western & A. R. Co. v. White Provision Co. (Ga., 1914), 82 S. E. 644.

(c) A state court has power to construe a tariff on file with the Interstate Commerce Commission and to say whether or not a particular rate exacted is in accordance with the tariff. So. Pac. Co. v. Frye & Bruhn, 143 Pac. 163, 165.

(d) State courts are not without jurisdiction to interpret a tariff though it is interstate and established as required by the act of Congress. Western & A. R. Co. v. White Provision Co. (Ga. 1914), 82 S. E. 644, 646.

(e) In our opinion, the fact that the Interstate Commerce Commission may have recommended the payment of special damage which flows from violation of a federal law is no reason why the state court may not take cognizance of a suit based in part upon another result of that act which, when connected with many other acts of a different nature, will show a wilful and malicious purpose, and give rise to a common-law cause of action. L. & N. R. Co. v. Ohio Valley Tie Co. (Ky.), 170 S. W. 633, 643.

§5½. In General.

(a) Carrier cannot by tariff provision exempt itself from liability to shipper or loss of property in transit. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 30.

§5¾. Assignments.

(a) A right of action against an intermediate or terminal connecting carrier, in an interstate shipment, for loss of property in transit resulting from its negligence is assignable; and where, as a result of such loss, the property does not exist, and where the bill of lading embracing the same has been surrendered to the carrier by the shipper in order to obtain delivery to him of other property embraced in such bill, the assignee may sue in his own name upon such right of action without showing that he is the actual holder of such bill. St. L. & S. F. R. R. Co. v. Mounts (Okla., 1914), 144 Pac. 1036.

(b) A right of action against an intermediate or terminal connecting carrier, in an interstate shipment, for loss of property in transit resulting from its negligence is assignable; and where, as a result of such loss, the property does not exist, and where the bill of lading embracing the same has been surrendered to the carrier by the shipper in order to obtain delivery to him of other property embraced in such bill, the assignee may sue in his own name upon such right of action without showing that he is the actual holder of such bill. St. L. & S. F. R. Co. v. Mounts (Okla.), 144 Pac. 1036, 1037.

§6. Initial Carrier.

See Courts, §6 (a), §11 (b), §12 (a).

(a) The Carmack Amendment expressly prohibits any exemption from the obligation to forward shipments within a reasonable time, and a stipulation in a bill of lading of a carload of strawberries that "No carrier is bound to transport such property by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable dispatch," will, if capable of being construed as inconsistent with such liability, be clearly ineffectual. N. J. P. & N. Ry. Co. v. Peninsula Produce Exchange (Md., 1914), 89 Atl. 433, 436.

(b) Under the provisions of the Carmack Amendment making the initial carrier liable for "any loss, damage or injury to" a connecting carrier, the initial carrier is liable for losses of value arising from delay in transportation as well as for losses due to damage or depletion of the commodity in the course of transportation. N. J. P. & N. Ry. Co. v. Peninsula Produce Exchange (Md., 1914), 89 Atl. 433, 434.

(c) An initial carrier is as fully responsible for loss or damage to freight in the hands of a connecting carrier, where no new bill of lading is issued upon a diversion of a shipment agreed to by carrier and shipper, as it would be had the shipment been originally billed from point of origin to ultimate destination. Gamble-Robinson Commission Co. v. Union Pac. Ry. Co. (Ill. 1914), 104 N. E. 666, 668.

(d) Twenty-two carloads of fruit were shipped from Utah points, consigned to plaintiff at Omaha, Neb. Upon arrival at the latter point 21 cars were diverted to points in Minnesota, South Dakota and Iowa, over lines not belonging to defendant. The fruit arrived at final destinations in damaged condition, and plaintiff brought suit under the Carmack Amendment. The evidence was conflicting as to whether defendant agreed to the diversion of the cars at Omaha to their final destinations, through rates to apply, and as to whether they were properly iced during transit, as directed in bills of lading. HELD, that the judgment of the Appellate Court was conclusive of both those questions. Gamble-Robinson Commission Co. v. Union Pac. Ry. Co. (Ill., 1914), 104 N. E. 666, 667.

(e) The initial carrier is, under the Carmack Amendment, liable to the consignor for loss sustained by him where goods shipped to be delivered upon surrender of the original bill of lading, properly endorsed, are delivered by the delivering carrier without taking up the bill of lading. K. C. & M. Ry. Co. v. N. Y. Cent. & H. Ry. Co. (Ark., 1914), 163 S. W. 171, 174.

(f) A carload of flour received by defendant for transportation beyond its line duly arrived at the place to which the shipper had by mistake billed it, and there remained uncalled for for five days after notice mailed to the consignee named, and after diligent inquiry upon the part of the connecting carrier to find and locate the consignee had failed. HELD, that the liability of the last carrier as a common carrier having terminated, and it having become liable only as a warehouseman, no liability attached to the initial carrier, since it was not the purpose of the Carmack Amendment to hold the inital carrier after the connecting carrier's liability as a carrier had ceased. Hogan Milling Co. v. Union Pac. Ry. Co. (Kan., 1914), 139 Pac. 397, 399.

(g) The purpose of the Carmack Amendment was to prohibit the initial carrier from stipulating in its contracts that it is only bound to carry the property over its own lines and deliver to a connecting carrier, since this practice entailed hardship upon the shipper, who was frequently unable to obtain evidence showing how or where a loss occurred. Hogan Milling Co. v. Union Pac. Ry. Co. (Kan., 1914), 139 Pac. 397, 398.

(h) An initial carrier is not liable under the Carmack Amendment for an interstate shipment over the lines of connecting carriers where the goods are held at their destination by the last carrier as a warehouseman after the lapse of a reasonable time for their removal subsequent to the mailing of a notice of their arrival and reasonable diligence to find and locate the consignee. Hogan Milling Co. v. Union Pac. Ry. Co. (Kan., 1914), 139 Pac. 397, 398.

(i) The Carmack Amendment does not apply to foreign commerce; and a railroad whose bills of lading expressly provide that they are issued on behalf of its only lines only, and as agent for its connections but without joint liability, cannot be held for the failure of a connecting steamship line to accept a shipment for transportation. Hamlen & Sons v. I. C. R. R. Co., 212 Fed. 324, 327.

(j) Three carloads of potatoes, loaded in "heater" cars at different stations on the line of the B. Ry. & E. Co., an electric railway, for shipment via Bangor, Me., and the M. C. R. R. to Hoboken, N. J., were damaged by freezing in transit. Though the shippers intended a through shipment to Hoboken, the B. Ry. & E. Co. issued bills of lading only over

its own line; but there was a through tariff rate from points of shipment to destination, and the M. C. R. R. on receiving the cars at Bangor advanced to the B. Ry. & E. Co. its proportion of the through freight charges. HELD, that the latter fact is some evidence of a "common control, management or arrangement for a continuous carriage or shipment," as defined by section 1 of the Interstate Commerce Act, and that therefore the B. Ry. & E. Co. was as to such shipments within the scope of the act as amended by the Carmack Amendment and as initial carrier was liable for the defaults of connecting carriers. Ross v. M. C. R. R. Co. (Me., 1914), 90 Atl. 711.

(k) An initial carrier that issues bills of lading only over its own line which do not provide for the heating of cars, is not liable under the Carmack Amendment upon a special agreement to heat, made by a connecting carrier. The latter being the first carrier to contract with the shipper with respect to heating, is, as to defaults in heating in the course of transportation, to be deemed the initial carrier. Ross v. M. C. R. R. Co. (Me., 1914), 90 Atl. 711, 713.

(l) A shipper seeking to enforce his claim for loss through delay in transportation against the initial carriers, may invoke the Carmack Amendment, though the declaration fails to aver that any connecting carriers existed, or show any facts permitting the amendment to operate. Norfolk Truckers Exch. v. N. S. R. R. Co. (Va., 1914), 82 S. E. 92.

(m) In an action against initial carrier for loss of goods, brought under the Carmack Amendment, it is immaterial where the loss occurred. St. L. B. & M. Ry. Co. v. Gould (Tex. Civ. App., 1914), 165 S. W. 13, 14.

(n) Plaintiffs delivered their trunks of the value of $425.40 to the St. L. I. M. & S. Ry. to be transported as baggage between Helena, Ark., and Dallas, Tex They made no declaration as to the value at the time of purchasing their tickets, though the carrier's tariff rule provided that unless a greater sum is declared by the passenger and charges paid for increased value, the baggage shall be deemed and agreed to be not in excess of $100. Plaintiffs had no knowledge of this rule. The trunks were lost in transit. HELD, that such failure on the part of the plaintiff to declare the value of the baggage did not relieve the carrier from liability for the full value. The relation of carrier and shipper was complete when plaintiffs paid their fares and offered their baggage for shipment, and its reception and acceptance by the carrier; plaintiffs then becoming liable for payment of the tariff rates in excess of the value of $100. St. L. I. M. & S. Ry. Co. v. Faulkner (Ark., 1914), 164 S. W., 763.

(o) The language of the Carmack Amendment does not make the initial carrier liable for every loss occurring on its line or those of its connections, but only for loss caused by the default, omission or commission of the initial or connecting carrier. A loss occurring without neglect or design of a carrier cannot be said to be caused by such carrier, and hence a loss occurring from fire on a vessel of a connecting carrier, without its design or neglect, for which it is relieved from liability by sections 4282 and 4289 of the U. S. Revised Statutes, cannot be said to be a loss for which the initial carrier is liable. Burke v. G. C. & S. F. Ry. Co., 147 N. Y. S., 794, 798.

(p) In an action against an initial carrier for goods lost by a connecting carrier the allegation that the property in question was received under a contract to transport and deliver to a connecting carrier, and that it was so transported and delivered in like condition as when received, is a complete defense, irrespective of a further allegation that the contract exempted the carrier from liability for loss of goods by the connecting carrier. Burke v. G. C. & S. F. Ry. Co. (1914), 147 N. Y. S. 794, 796.

(q) The fact that the shipper on learning that a shipment has not been delivered by the connecting carriers to the consignee, on directing the initial carrier to have the goods returned at once, at the suggestion of its agent takes the matter up with the connecting carrier, does not relieve the initial carrier of liability for loss resulting from failure to promptly deliver. Wien v. N. Y. C. & H. R. R. R. Co. (1914), 146 N. Y. S. 1010.

(r) Where a trolley express made no through rate to a point on the line of a connecting express company, but charged a flat rate for transportation to the point of connection, plus the charges of the latter company which it advanced, and the shipper having, through a long

course of dealing with the latter, knowledge that its regulations on file with the Commission were based on an agreed valuation, unless a higher valuation was disclosed and a higher rate paid, the liability of the trolley express company for loss occurring to goods while in the possession of the connecting line was limited to the valuation upon which the rate of the connecting line was based, though its bill of lading did not provide for limitation of liability. Glenlyon Dye Works v. Interstate Exp. Co. (R. I., 1914), 91 Atl. 5, 7.

(s) Plaintiff brought action for the value of goods lost in transit between Phillipsdale, R. I., and New York, N. Y. Defendant operated a trolley express car by which the goods were shipped from Phillipsdale to Providence, four miles. where they were delivered to the E. & P. Express Co. for transmission to New York. Defendant fixed no through rate from Phillipsdale to New York and did not render plaintiff a bill for through charges; but did have an agreement with plaintiff for a rate of 6c from Phillipsburg to Providence, irrespective of the character or value of the goods. This was paid on weekly bills rendered on all goods carried and delivered to the E. & P. Express Co., whether the charges of the latter were prepaid or were collected from the consignee. In the former event the defendant advanced the amount thereof, in its bill to plaintiff, placing the same as a separate item under the head of "advances." Defendant did. however, in its bills of lading, undertake to carry the goods from Phillipsdale to New York City. HELD, that defendant did by the latter fact engage in commerce between the states, and hence subjected itself to all the restrictive provisions prescribed by Congress in the Interstate Commerce Act and its amendments, and became an initial carrier within the provisions of section 20 of the Act. It was therefore liable for loss or damage to the goods in the hands of the E. & P. Exp. Co., notwithsgtanding a condition printed on the back of its bills of lading by which it sought to restrict its liability to loss occurring on its own road. Glenlyon Dye Works v. Interstate Exp. Co. (R. I., 1914) 91 Atl. 5.

(t) The duty of an initial carrier with reference to goods transported does not end by merely carrying the goods to their destination safely. Delivery to the person entitled to receive the same, or, if delivery cannot be made, then safe storage subject to the orders of the consignors, is a part of the contract of carriage. Coovert v. S. P. & S. Ry. Co. (Wash. 1914), 141 Pac. 324.

(u) Plaintiff shipped goods from Vancouver, Wash., to Canton, Ohio, via the S. P. & S. Ry. and Penn R. R., and forwarded the bill of lading to the consignee. The latter returned the bill of lading to plaintiff with notice that it would not receive the goods; whereupon plaintiff notified the S. P. & S. Ry. of the consignee's action, surrendered to it the bill of lading, and directed a return of the goods. The S. P. & S. Ry. communicated such direction to the Penn R. R., but the latter failed to observe it, and eventually delivered the goods to the consignee, and the goods were lost to plaintiff. Plaintiff brought action against the S. P. & S. Ry. for the damages. HELD, that plaintiff was the lawful holder of the bill of lading within the provisions of the Carmack Amendment; that the Penn R. R., in delivering the goods to consignee without production of the bill, did so at its peril, and that the S. P. & S. Ry., as initial carrier, was liable in damages. Coovert v. S. P. & S. Ry. Co. (Wash. 1914), 141 Pac. 324.

(v) Under the Hepburn Act the only new right of action given the legal holder of a bill of lading in interstate commerce shipments is against the initial carrier, where the primary cause of liability is upon the subsequent connecting carrier. St. L. & S. F. R. R. Co. v. Mounts (Okla., 1914), 144 Pac. 1036.

(w) Under an interstate shipment, the contract of the initial carrier fixes the liability of the parties executing th contract, as well as that of the intermediate and connecting carriers, and under the law such connecting carriers become the agents of the initial carrier, and are charged with the duty of carrying out the contract of their principal, with no right or power to ingraft new conditions or stipulations on the contract already lawfully made and executed, binding them to fully perform their part of the contract of carriers under the terms of said contract, and therefore an attempt by a carrier to exempt the carriers from liability unless the claim for damages should be filed within 30 days after the injury is invalid under the Carmack Amendment. M K. & T. Ry. Co. v. Ward (Tex., 1914), 169 S. W. 1035.

(x) Under the Carmack Amendment an initial carrier is liable for any loss or injury to livestock caused through unnecessary delay or rough handling by an intermedate carrier. Texas Midland R. R. v. Becker & Cole (Tex. 1915), 171 S. W. 1025, 1026.

(y) Under the Carmack Amendment the owner of a damaged shipment can sue the initial carrier alone of any one of the connecting carriers, or all jointly, for the damages. A. T. & S. F. Ry. Co. v. Boyce (Tex., 1914), 171 S. W. 1094, 1097.

(z) The defendant, as the initial carrier, is liable to the plaintiff for the loss of the property by any carrier over whose line the property may have passed, unless exempted by a clause of limitation in the bill of lading. A. C. Cheney P. A. Co. v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp. 285, 293.

(aa) No doubt one of the strong reasons for the enactment of the Carmack Amendment, which fixes liability on the initial carrier, was the difficulty of the shipper in ascertaining the line on which the negligence occurred; but, no doubt, also, it was to protect shippers from the expense of instituting suits distant from their homes, perhaps in other states and in strange tribunals. Whatever may have been the reasons actuating Congress in passing the law, it fixes absolutely the liability of the initial carrier without regard to whether a caretaker accompanies the shipment or not, and regardless of the fact as to whether the shipment was in the possession of the initial carrier. T. M. Ry. Co. v. King (Tex. 1915), 174 S. W. 336.

(bb) Under the Hepburn Act, June 29, 1906, c. 3591, § 7, 34 Stat. 593 (U. S. Comp. St. 1913, § 8592), the only new right of action given the legal holder of a bill of lading in interstate commerce shipments is against the initial carrier, where the primary cause of liability is upon the subsequent connecting carrier. St. L. & S. F. R. Co. v. Hounts (Okla), 144 Pac. 1036, 1037.

(cc) Under an interstate shipment, the contract of the initial carrier fixes the liability of the parties executing the contract, as well as that of the intermediate and connecting carriers, and under the law such connecting carriers become the agents of the initial carrier, and are charged with the duty of carrying out the contract of their principal, with no right or power to ingraft new conditions or stipulations on the contract already lawfully made and executed, binding them to fully perform their part of the contract of carriers under the terms of said contract, and therefore an attempt by a carrier to exempt the carriers from liability unless the claim for damages should be filed within 30 days after the injury, is invalid under the Carmack Amendment. M. K. & T. Ry. Co. v. Ward (Tex.), 169 S. W. 1035.

(dd) Under the Carmack Amendment an initial carrier is liable for any loss or injury to livestock caused through unnecessary delay or rough handling by an intermediate carrier. Texas Midland R. R. v. Becker & Cole, 171 S. W. 1025, 1026.

(ee) The Carmack Amendment fixes absolute liability upon the initial carrier. The initial carrier is given a cause of action against its connecting carriers, and, if such carrier is insolvent, that misfortune cannot deprive the shipper of his cause of action against such initial carrier. The fact that the initial carrier might not be able to recover from the connecting line is unfortunate for the initial carrier, but cannot affect the validity of the statute. T. M. Ry. Co. v. King (Tex. 1915), 174 S. W. 336, 337.

§7. Intermediate Carrier.

See Intermediate Carrier.

(a) The Carmack Amendment does not provide that suit against the initial carrier shall be the exclusive remedy for the offended shipper. It provides merely for suit against the initial carrier, but does not take away the right of the shipper to proceed in a proper case against a connecting carrier. A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ga., 1913), 78 S. E. 1019, 1021.

(b) The connecting carriers are to be treated as the agents of the initial carrier for the purpose of transportation and delivery, and the case as though the point of destination were on its own line, operated in different states. The goods not having been delivered, the presumption attaches that they were lost through the negligence of the initial carrier or its agents, and the burden of proof that the loss resulted from some cause for which the initial carrier was not responsible was thrown upon the carrier. A. C. Cheney P. A. Co. v. N. Y.

C. & H. R. R. Co., 152, N. Y. Supp., 285, 293.

(c) In spite of the Carmack Amendment, a connecting carrier is directly liable to a shipper for loss and damage to an interstate shipment. Elliott v. C. M. & St. P. Ry. Co., (So. Dak. 1915), 150 N. W. 777, 778.

(d) The Carmack Amendment does not force a shipper to sue the initial carrier. In case of loss or injury the shipper may sue any carrier responsible for the damage. Bichlmeier v. Minneapolis St. P. & S. S. M. Ry. Co. (Wis. 1915), 150 N. W., 508, 509.

(e) The Carmack Amendment may be invoked by a shipper in a suit against a connecting carrier, although the declaration does not aver that any connecting carrier existed or show any facts to allow the Carmack Amendment to operate. Norfolk Trucker's Exch. Inc. v. Norfolk Southern R. Co. (Va.), 82 S. E. 92, 93.

§7½. Inspection.

(a) Although section 3 of the uniform bill of lading provides that the measure of damages is the invoice price of the shipment including freight charges if prepaid at the place of shipment, yet where the consignee is compelled to pay the freight before being allowed to inspect the goods at the place of delivery, such charges should be considered in determining the amount of damages for injury to the shipment. D. & R. G. R. Co. v. A. Peterson Grocery Co., (Colo. 1915), 147 Pac., 633, 665.

§8. Delivering Carrier.

(a) There is nothing in the Carmack Amendment which will prohibit a shipper of goods in interstate commerce over the lines of several carriers from bringing suit, under the provisions of the Georgia Civil Code of 1910, §2752, against the last carrier who received the goods as "in good order," for damages sustained on account of loss or damage to the goods. A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ga., 1913), 78 S. E. 1019, 1021.

(b) There is nothing in the Hepburn Act or in the Carmack Amendment which prohibits a carrier of live stock from stipulating against liability resulting from failure of shipper to accompany and care for stock, or from entering into any other reasonable stipulation which does not amount to a contractual exemption from liability on account of the carrier's negligence. Cranor v. Southern Ry. Co. (Ga., 1913), 78 S. E. 1014, 1011.

(c) The Carmack Amendment does not exempt from liability, expressly, or by implication, the terminal carrier or any other. Hence if the terminal carrier actually damaged the shipment it is liable to the shipper. Eastover Mule & Horse Co. v. A. C. L. R. Co. (S. Car., 1914), 83 S. E. 599, 600.

(d) The Carmack Amendment has not modified a rule of law that a connecting carrier is presumed to have received the shipment in good condition and would not have received the shipment had the contents been in bad condition, without making some notation to that effect and protest. Therefore, where the shipper of livestock shows that the stock was in good condition when delivered to the initial carrier he can recover from the terminal carrier for damage. It is the business of the terminal carrier to prove that it did not cause it. Eastover Mule & Horse Co. v. A. G. L. R. Co. (S. Car., 1914), 83 S. E. 599, 600.

(e) Section 22 of the Interstate Commerce Act permits an action to be brought in a state court for the wrongful failure of a terminal carrier to deliver an interstate shipment. W. & A. R. Co. v. White Provision Co. (Ga.), 82 S. E. 644, 646.

(f) The plaintiff alleged the following, among other things: It purchased a carload of hogs and caused them to be shipped from Kelso, Tenn., to Atlanta, Ga. The hogs could have been shipped in a car 36 feet long, for which the tariff rate, as published by the carriers, between those points was $53. Its vendor ordered a car of that length for the purpose of the shipment. Under the tariff schedule, the carriers reserved the right, for their own convenience, to furnish a longer car than that called for or required by the shippers. In that event the rate of freight is the price of the car called for, when such car is sufficient to carry the shipment. The first carrier, the Nashville, Chattanooga & St. Louis Ry., for its own convenience, instead of furnishing a car 36 feet long, which would have been sufficient, furnished one 38 feet long, and this fact was duly noted

on the bill of lading. The freight was prepaid, and this fact was also entered. When the car of hogs arrived at their destination, the last carrier, the defendant, refused to deliver the hogs without the payment of an additional amount of $2.65, though notified of the facts by the plaintiff and against its protest; and thereby damage resulted as set out. HELD, since the plaintiff did not contend that the fixed tariff rate was unreasonable, illegal or discriminatory, but that its vendor paid the fixed rate and had due notation thereof made by the terminal carrier, in spite of this, it refused to perform its duty as a common carrier by delivering the shipment without requiring payment of an additional and wholly illegal demand, and section 22 of the Interstate Commerce Act provides that nothing in the act shall in any way abridge or alter the remedies existing at common law or by statute, the state court had jurisdiction of the plaintiff's claim for damages arising from the illegal refusal of the terminal carrier to deliver freight on which the proper charges had been paid, and suit could be brought against the final carrier without joining the initial carrier. W. & A. R. Co. v. White Provision Co. (Ga.), 82 S. E. 644, 645.

(g) The Carmack Amendment does not exempt from liability, expressly or by implication, the terminal carrier or any other. Hence if the terminal carrier actually damaged the shipment it is liable to the shipper in the amount stated. Eastover Mule & Horse Co. v. A. C. L. R. Co. (S. Car.), 83 S. E. 599, 600.

§9. Agreed or Restricted Valuation.

See Infra, §10; Alternative Rates, I (a); I (f); Released Rates.

(a) The filing and publication of interstate rates based on a reasonable agreement as to the valuation of property shipped, and which is proportioned to the extent of the risk assured by the carrier, is consonant with public policy, and binding upon the parties. Christl v. M. P. Ry. Co. (Kan. 1914), 141 Pac. 587.

(b) The provisions in the Carmack Amendment that no contract, receipt, rule or regulation shall exempt an interstate carrier from the liability thereby imposed, does not forbid a limitation of liability, in case of loss, to a valuation agreed upon in the contract of shipment, for the purpose of determining which of two alternative rates shall apply to the shipment. N. C. & St. L. Ry. v. C. V. Truitt Co. (Ga. App. 1914), 82 S. E. 465.

(c) A provision in a bill of lading that loss or damage shall be computed on the basis of the invoice price to the consignee at the time and place of shipment is only valid when based upon the reduced rate; otherwise, the value of the property at the destination is the proper measure of damages. K. C. & M. Ry. Co. (Ark., 1914), 170 S. W. 565, 567.

(d) A provision in the bill of lading that liability for loss should be measured by the value of the goods at the time and place of shipment is not invalid under the Carmack Amendment. Spada v. Pennsylvania R. Co. (N. J., 1914), 92 Atl. 379, 381.

(e) In an interstate shipment of property, a stipulation limiting the carrier's liability to the agreed value of the property is valid, even when loss is due to the carrier's negligence, if the shipper himself has declared the value expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith. St. L. & S. F. R Co. v. Mounts (Okla., 1914), 144 Pac. 1036.

(f) A stipulation in the bill of lading that in case of loss or damage, it shall be computed upon the invoice value of the shipment at the time and place of shipment is valid. Zoller Hop Co. v. So. Pac. Co., 143 Pac. 931.

(g) In a suit in a state court for loss and damage the carrier is entitled to prove the schedules, rules and regulations under which it received the shipment and which had the approval of the Interstate Commerce Commission. that the means of knowing all about the freight tariff were open and within convenient reach of the plaintiff in the manner directed by the statute, and that the plaintiff had itself made out the bill of lading and tendered it with the hops it shipped. All this was proper to consider in any event, if the question were open, in determining whether the transaction was attended with deceit or unfairness, or was carried on in the open. Zoller Hop Co. v. So. Pac. Co., 143 Pac. 931, 933.

(h) A provision in the bill of lading that liability for loss should be measured by the value of the goods at the time and place of shipment is not invalid under the Carmack Amendment. Spada v. Pennsylvania R. Co. (N. J.), 92 Atl. 379, 381.

(i) Under the Carmack Amendment the subject of liability of a common carrier for loss or damage to an interstate shipment is entirely a federal question and since this amendment does not specifically refer to an agreement limiting the liability of a carrier to an agreed valuation but does supersede all state statutes on that subject, the validity of such an agreement is to be determined by the common-law as declared by the federal courts. Adams Express Co. et al. v. Welborn, (Ind. 1915), 108 N. E., 163, 164.

(j) A stipulation in the bill of lading that in case of loss or damage, it shall be computed upon the invoice value of the shipment at the time and place of shipment is valid. Zoller Hop Co. v. So. Pac. Co. 143 Pac. 931.

(k) The burden of proof is upon an interstate carrier who has negligently lost property in transit, claiming a release to the amount of the shipper's declared or agreed value of such property, to prove all the facts essential to such defense, including a valid stipulation of release. St. L. & S. F. R. Co. (Okla), 144 Pac. 1036, 1037.

(l) An undervaluation of property in fixing interstate freight rates based upon value, whereby the shipper obtains a lower tariff rate than the actual value of the property requires, is prohibited by law; and a stipulation in a shipper's contract for the release of a carrier from liability for loss of the property in excess of the amount at which such property is so undervalued, if the carrier has actual knowledge of such undervaluation, is void, and can neither be made the basis of an action nor of a defense. St. L. & S. F. R. Co. (Okla.), 144 Pac. 1036, 1037.

(m) Where there has been an unlawful declared or agreed undervaluation of property in fixing tariff rates in interstate shipments without the actual knowledge thereof on the part of the carrier, the shipper is estopped to recover more than such declared or agreed value. St. L. & S. F. R. Co. (Okla.), 144 Pac. 1036, 1037.

(n) In an interstate shipment of property, a stipulation limiting the carrier's liability to the agreed value of the property is valid, even when loss is due to the carrier's negligence, if the shipper himself has declared the value expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith. St. L. & S. F. R. Co. v. Mounts (Okla.), 144 Pac. 1036, 1037.

(o) Where, in consideration of a lower rate, the value of horses and mules is released to $100.00 for each animal, the shipper is bound by such limitation, it not being invalid under the Carmack Amendment. Robins v. L. & N. R. Co. (Ky.), 169, S. W. 831.

(p) That rule is that, while a common carrier cannot exempt itself from negligence, it may, by fair and reasonable exemptions, limit the amount recoverable by a shipper to an agreed value made for the purpose of obtaining a lower rate of two or more rates, proportionate to the amount of the risk K. C. & M. Ry. Co. (Ark), 170 S. W. 565, 566.

(q) A provision in a bill of lading that loss or damage shall be computed on the basis of the invoice price to the consignee at the time and place of shipment is only valid when based upon a reduced rate; in fact, only when rate is in force, the value of the property at the destination is the proper measure of damages. K. C. & M. Ry. Co. (Ark.), 170 S. W. 565, 567.

(r) Until a carrier establishes the filing of released rates as provided in the Interstate Commerce Act the burden is on it to show the fairness and reasonableness of the contract for interstate shipment, if it attempts to limit liability on graduated rates. When the fact of filing is established, the shipper is compelled to take notice of the rates contained in the tariff schedule, "not only because referred to in the contract signed by them, but because they had been lawfully filed and published." M. K. & T. Ry. v. Harriman, 227 U. S. 669, 33 Sup. Ct. 397, 57 L. Ed. 690. When the carrier graduates its rates by value, and has filed its tariffs showing the rates applicable to a particular commodity or article of commerce, based upon a difference in valuation, the shipper must take notice, for the valuation, as said in the Harriman case, "automatically de-

termines which of the rates is the lawful rate." Adams Express Co. v. Cook (Ky. 1915), 172, S. W. 1096, 1098.

(s) A livestock contract limiting liability with the usual provisions concernin notice of loss and claim for damages is not prima facie invalid under the Carmack Amendment, but competent testimony must be introduced concerning its making in order to sustain a claim for its invalidity. Thomas Bros. v. St. L. & S. F. R. Co., (Mo. 1915), 173. S. W., 96, 99.

(t) Where a car load of emigrant goods and live stock is shipped by rail from Crescent, Okl., to Hill City, Kan., but the point of destination is altered by order of the shipper at Salina, Kan., to Buffalo Park, Kan., the entire transportation is governed by the regulations of interstate commerce, under which a carrier may limit its liability for damages to the reasonable value of the property declared in the shipper's contract. Following Metz v. Railway Co., 90 Kan. 460, 135 Pac., 667; Adams Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct., 148, 57, L. Ed., 314, 44 L. R. A. (N. S.) 257. Kirby v. U. P. R. Co., (Kan. 1915), 146 Pac. 1183.

(u) Where the shipper has his choice of two rates, the higher carrying unlimited carriers' liability and in "a fair, just and reasonable agreement" declares or agrees the value of his shipment is a certain sum and thereby secures a reduced transportation rate, he is bound by that declaration or agreement, estopped from claiming or recovering more than that value in case of loss of or damage to the property, and conclusively presumed to have known the governing tariff. The Cummins Amendment, 33 I. C. C., 682, 683.

(v) Section 3 of the Uniform Bill of Lading providing that the liability of the carrier of goods for any loss or damage should be computed on the basis of the invoice price of the shipment at the time and place of shipment is valid. D. & R. G. R. Co., v. A. Peterson Grocery Co., (Colo. 1915), 147 Pac., 633, 665.

(w) A carrier engaged in interstate commerce by water can so stipulate in a contract of carriage as to exempt itself from liability in case the shipment is destroyed by fire, provided the fire is not occasioned by the carrier's negligence, or the destruction of the shipment by fire is not the result of the carrier's negligence after the fire is discovered. In the present case it is not alleged that the loss by fire was the result of the carrier's negligence. Canby v. Merchants' & Miners Transp. Co., (Georgia 1915) 85 S. E., 361, 362.

(x) In interstate shipments, irrespective of the bills of lading and whether the carrier has by proper bill of lading or lawful contract limited its liability to the shipper in case of loss, the published freight rate or tariff, when based on a valuation of the goods carried, binds the carrier, and the valuation placed on the goods by the shipper for the purpose of obtaining the rate published limits a recovery to such valuation in case of loss. Michelson v. Judson Freight Forwarding Co., (Ill. 1915), 109 N. E. 281, 286.

(y) In an Interstate shipment, where the liability of the carrier is proportioned and limited under a just and reasonable agreement that in case of loss or injury the shipper shall recover no more than a certain valuation of the property transported, which is fixed by an agreement made in consideration that the shipper shall have the lower of two rates, the limitation enters into and becomes a part of the rate, and the parties cannot, by any compromise or agreement after a loss has occurred change the limitation and arrange for the payment of a greater amount than the value as fixed in the shipping contract, and which became a factor of the rate charged. Donohoo Horse & Mule Co. v. Missouri K. & T. Ry. Co., (Kan. 1915) 149 Pac. 436.

(z) A regulation filed with the Interstate Commerce Commission, limiting the liability of the carrier to a specifed amount in the absence of a declaration of a greater value, is conclusively presumed a part of the contract of carriage and governs the liability of the carrier. Colby v. American Express Co., (N. H. 1915), 94 Atl., 198, 199.

(aa) A contract of shipment limiting the liability for loss and injury to an interstate shipment of cattle is valid. Ball v. Lusk, (Mo. 1915), 175 S. W. 228, 239.

(bb) In the federal courts, it is well settled that a contract by a common carrier relieving him from liability for his negligence is against public policy and void. (Cau v. T. P. R. R. Co., 194 U. S., 427, 24 Sup. Ct., 663, 48 L. Ed. 1053;

Adams Express Co. v. Croninger, 226 U. S., 491, 33 Sup. Ct., 148, 57 L. Ed., 314, 44 L. R. A. (N. S.), 257; but, on the other hand, stipulations requiring claims to be presented within a certain time are held by the federal courts not contracts against negligence, but conditions precedent to suit affecting, not the carrier's liability, but the shipper's remedy, and when the time is reasonable such stipulations are held by the federal courts to be valid and binding. (Queene of the Pacific, 180 U. S., 49, 21 Sup. Ct., 278, 45 L. Ed. 419; Southern Express Co. v. Caldwell, 21 Wall, 264, 22 L. Ed. 556. The St. Hubert (D. C.) 102 Fed. 362; Metropolitan T. Co. v. Toledo, St. L. & K C. R. Co. (C. C.) 107 Fed. 629; The Westminster, 127 Fed. 680, 62 C. C. A., 406; The Arctic Bird (D. C.) 109 Fed. 167; M. K. & T. R. Co. v. Harriman, 227 U. S., 657, 33 Supt. Ct., 397, 57 L. Ed., 690.) And such is the general rule in this country. Houtz v. Union P. R. Co., 17 L. R. A., (N. S.), 628, note; 5 Am. & Eng. Enc. of Law, (2d Ed.), 321. Lynch v. N. Y. C. & H. R. R. Co., 153 N. Y. S. 633, 636.

(cc) A section in the bill of lading which provides as follows, "The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto except as hereinafter provided. No carrier or party in possession of any property herein described shall be libale for any loss thereof or damage thereto or delay caused by the act of God, the Public enemy, quarantinem the authority of law, or the act or default of the shipper or owner, or for differences in the weight of grain, seed or other commodities caused by natural shrinkage or discrepancies in elevator weights," is void under the Carmack Amendment, Barnett v. N. Y. C. & H. R. R. Co., 153 N. Y. S. 374, 377.

(dd) In cases of foreign shipments the carrier has the unrestricted right to limit its liability, and when the shipper delivers his freight for foreign transportation under bill of lading limiting the carrier's liability the limitations are enforceable. Such rule, is, however, subject to the limitation arising as matter of law that the carrier will be liable for the loss occuring through the excepted cause if the negligence of itself or its servants contributed thereto. Texarkana & Ft. S. Ry. Co. v. Brass, (Tex. 1915), 175 S. W., 779, 780.

§10 Common Law Liability in General. See Supra, §9.

(a) No contract, receipt, rule or regulation may exempt a carrier from liability for loss or damage. Protection of Potato Shipments in Winter, 29 I. C. C. 504, 507.

(b) Plaintiff entered into a special contract with the N. Y. C. & H. R. R. R. for the transportation of his circus outfit. The outfit consisted of show material, animals, paraphernalia, employes, and performers and their baggage in cars to be furnished, loaded and unloaded by and at plaintiff's expense. The company's engineer and trainmen were to be, as to the transportation, the servants of plaintiff, and the carrier was to be exempt from liability of loss from any cause. The rates charged under such special contracts were about one-half of the rates provided for transportation of such outfits by the defendant's tariff on file with the Commission. The outfit was damaged by fire resulting from defendant's negligence. HELD, that defendant was not acting as a common carrier and the contract was valid. Terrari v. N. Y. C. & H. R. R. R. Co. (1914), 147 N. Y. S. 376, 381.

(c) A clause in a contract for interstate transportation, relieving the carrier from loss occasioned by its own negligence, is void under section 20 of the Interstate Commerce Act, and against public policy, where the carrier acts as a common carrier. Terrari v. N. Y. C. & H. R. R. R. Co. (1914), 147 N. Y. S. 376, 379.

(d) Though a carrier may limit its liability, it is liable for negligent injury to an interstate shipment, though its bill of lading seeks to restrict its liability to the invoice price, the shipper receiving no consideration therefor. I. & G. N. Ry. Co. v. Rathblath (Tex. Civ. App., 1914), 167 S. W. 751.

(e) A common carrier may not, by special contract, exempt itself from or evade its common-law liability for the consequences of its own negligence or that of its agents. U. P. R. Co. v. Libby, (Colo. 1915), 146 Pac. 1076, 1078.

(f) Again under the federal regulations governing interstate shipments, the defendant cannot, by a mere stipulation in an independent contract, such as lease of an elevator, having no connection with the contract of shipment of

the goods, relieve itself of its liabilities as a common carrier. It can do this only in the mode pointed out in such regulations, so that all shippers will be treated alike, which would not be the case if fefendant were allowed to absolve itself by a clause in a contract leasing a piece of property to the shipper. Morrison Grain Co. v. Missouri Pac. Ry. Co. (Mo.), 170 S. W. 404, 407.

(g) While the Carmack Amendment provides that the carrier should issue a receipt or bill of lading for property received for transportation, it nowhere says the liability of such carrier shall not attach until such bill of lading has been issued. Morrison Grain Co. v. Mo. Pac. Ry. Co. (Mo.), 170 S. W. 404, 407.

(h) A contract limiting or restricting the common-law rule as to the liability of a carrier for negligence in the shipment of goods is valid only when based on a consideration, usually a reduction in the rate of the freight charged. K. C. & M. Ry. Co. (Ark.), 170 S. W. 565, 566.

(i) Under the Interstate Commerce Act a common carrier cannot exempt itself from liability for its own negligence or that of its servants. Hunt v. St. L. I. M. & S. Ry. Co. (Mo. 1915), 173 S. W., 61, 62.

(j) Where through the negligent delay in shipping apple barrels, apples at the point of destination rotted, a claim for such injury is within the scope of a provision in the bill of lading issued for the apple barrels that claims for loss, damage or delays must be made within four months after delivery, since the clause in the bill of lading was obviously intended to be comprehensive and to include all damages that reasonably might be anticipated to follow the breach of the carrier's duty to deliver the barrels within a reasonable time. Bailey v. M. P. Ry. Co. (Mo. 1915), 171 S. W., 44, 46.

(k) A provision in the bill of lading by which the carrier limits its liability against loss by fire not attributable to its negligence is vaild under the Carmack Amendment. Central of Georgia Ry. Co. v. Patterson, (Ala. 1915), 68 So. 513, 514.

§10½. Damages for Delay.

See Supra, §6 (a), (b).

(a) The provision of the Carmack Amendment, making the initial carrier responsible for loss or damage or injury to goods, is broad enough to cover a case of damage to the shipper by reason of delay. It would be a narrow construction of the statute to confine its operation to the actual loss of goods, or their physical injury. The wrong for which the statute undertook to give a remedy was that done to the shipper, and, if the shipper has suffered loss by reason of negligent or unreasonable delay of the carrier in the performance of its contract, it is just the same as though the loss had resulted from a physical injury to the goods or from the actual loss or disappearance of specific articles. Norfolk Truckers' Exch. v. N. S. R. R. Co. (Va., 1914), 82 S. E. 92, 93.

§10¾. Damages for Mental Anguish.

(a) Though a carrier may under the Carmack Amendment by stipulation limit its liability for damages to property, the Act does not cover special damages, such as mental anguish, which are not damages to the property; and hence as to such damages there can be no limitation. Byers v. Southern Express Co. (N. C., 1914), 81 S. E. 741, 743.

§11. Notice of Loss.

See Bills of Lading, §1 (b), §2 (a).

(a) Denial of liability on the part of a traffic manager, solely upon the ground that delivery of the freight was found to have been made in due time, constitutes a waiver of a clause in the bill of lading that claims for loss or damage must be made within a specified time. Peninsula Produce Exchange v. N. Y. P. & N. Ry. Co., 89 Atl. 437, 438.

(b) A provision in a bill of lading that "claims for loss, damage or delay must be made in writing to carrier at point of delivery, or at point of origin within four months after delivery of property, or, in case of failure to make delivery, then within four months after reasonable time for delivery has elapsed," is reasonable and valid. Peninsula Produce Exchange v. N. Y. P. & N. Ry. Co. (Md., 1914), 89 Atl. 437, 438.

(c) Under the Carmack Amendment each connecting carrier is the agent of the others, and a stipulation in the contract of shipment requiring notice in writing of damages to be given to the initial carrier within 90 days is suffi-

ciently complied with by giving notice to a connecting carrier. Overton v. C. R. I. & P. Ry. Co. (Tex. Civ. App. 1913), 160 S. W. 111.

(d) The federal, and not the state, statutes fix the liability of carriers as to interstate shipments, and, since the former make no provision against inserting in the contract of shipment a stipulation for notice of loss or damage to be given within a certain time, such a stipulation is proper. G. H. & S. Ry. Co. v. Sparks (Tex. Civ. App. 1914), 162 S. W. 943, 944.

(e) The Carmack Amendment does not deprive the carrier of the right to make with the shipper a reasonable contract providing for notice of loss or damage or a reasonable limitation upon the time of bringing an action for the recovery thereof. Ray v. M. K. & T. Ry. Co., 133 Pac. 847, 849.

(f) A limitation of 10 days after delivery within which a claim for loss or damage must be given to the carrier is valid under the Carmack Amendment. Spada v. Pennsylvania R. Co. (N. J., 1914). 92 Atl., 379, 381.

(g) A provision in the bill of lading that a claim for loss or damage must be presented within 4 months from the delivery of the shipment is valid. Davenport v. Chesapeake & O. Ry. Co., 149 N. Y. Sup. 865, 866.

(h) A provision in the bill of lading that a claim for loss, damage, or delay must be made within four months after delivery, is valid under the Carmack Amendment. Bailey v. M. P. Ry. Co. (Mo., 1914), 171 S. W. 44, 45.

(i) Where through the negligent delay in shipping apple barrels, apples at the point of destination rotted, claim for such injury is within the scope of a provision in the bill of lading issued for the apple barrels that claims for loss, damage or delay must be made within four months after delivery. Since the clause in the bill of lading was obviously intended to be comprehensive and to include all damages that reasonably might be anticipated to follow the negligent reach of the carrier's duty to deliver the barrels within a reasonable time. Bailey v. M. P. Ry. Co. (Mo., 1914), 171 S. W. 44, 46.

(j) A provision in the livestock contract that claims for loss must be presented within ten days after the removal of the animals from the cars may be waived by the carrier and the fact that such limitation is filed with the Commission cannot change this rule. Howard & Callaghan v. I. C. R. R. Co. (Ky., 1914), 171 S. W. 442, 445, 446.

(k) A provision in the livestock contract that claims for damage must be presented within ten days from the time the stock was removed from the car is not void under the Carmack Amendment. Howard & Callaghan v. I. C. R. R. Co. (Ky., 1914), 171 S. W. 442, 445.

(l) The limitation of 10 days after delivery within which a claim for loss or damage must be given to the carrier is valid under the Carmack Amendment. Spada v. Pennsylvania R. Co. (N. J.), 92 Atlantic 379, 381.

(m) A provision in the bill of lading that a claim for loss or damage must be presented within 4 months from the delivery of the shipment is valid. Davenport v. Chesapeake & O. Ry. Co., 149 N. Y. Suppl. 865, 866.

(n) A state statute imposing a penalty of $50.00 on a common carrier for failure to adjust a claim for damages within 90 days on a shipment made within the state, and within four months in case of shipments from without the state, is rendered inapplicable by a rule of the Interstate Commerce Commission, providing that a carrier must dispose of a claim within six months. Morphis v. Southern Express Co. (N. C.), 83 S. E. I.

(o) A provision in the bill of lading that a claim for loss, damage, or delay must be made within four months after delivery is valid under the Carmack Amendment. Bailey v. M. P. Ry. Co. (Mo., 1914), 171 S. W. 44, 45.

(p) A provision in the livestock contract that claims for damage must be presented within 10 days from the time the stock was removed from the car is not void under the Carmack Amendment. Howard & Callaghan v. I. C. R. Co. (Ky.), 171 S. W. 442, 445.

(q) A sudden change, from ignoring must be presented within a certain time, to literally enforcing it, necessarily creates multitudes of unjust discriminations. The Cummins Amendment, 33 I. C. C., 682, 691.

(n) The Cummins Amendment makes a rule that claims for loss or damage

it unlawful for the carrier to fix a period for giving notice of claims shorter than 90 days, for the filing of claims shorter than four months, and for the institution of suits shorter than two years. The law does not indicate the time or date from which these several periods of time shall be computed; that is; whether from the date of delivery by the carrier of the damaged property, or in case of loss, after a reasonable time for delivery has elapsed, from the date shown on the bill of lading, or from the occurrence of the loss or of the damage. It seems clear that these provisions are, in common with the other matters, governed by the amendment, confined to instances of loss, damage, or injury caused by the carriers. It will be necessary for the carriers to determine what periods of time they will fix for the giving of notice of claims, the filing of claims, and the institution of suits. The dates or times from which such periods shall run should also be fixed in the rules. In the interest of thorough understanding and to avoid controversies it is very desirable that these rules be uniform for all the carriers of the country. The Cummins Amendment, 33 I. C. C., 682, 691.

(s) Representatives of carriers and shippers alike appeared before the Commission, joining in request for approval of a waiver by the carriers of the provision in the uniform bill of lading that claims for loss, damage or delay must be presented within four months. This provision had been incorporated into both the uniform bill of lading, used in Official and Western Classification territory, and the standard bill of lading used in Southern territory. In the case of the uniform bill it had been embodied in the freight classifications of carriers and thus made a part of their tariff schedules. The provision had, from a variety of reasons, particularly doubt as to its legality, been disregarded by many of the carriers, thus leading to widespread and serious discrimination. The legality of the provision having been sustained by the courts, however, all parties thought best, in view of the past discriminations, to waive the limitation as to past claims. HELD, that the Commission is without authority to order carriers to disregard their tariffs, nor does it feel justified in acquiescing in the adjustment of matters brought into this condition by disregard of tariff provisions, except from the necessity of the situation, where to do otherwise must leave uncorrected grossly unjust and widespread discriminations. To prevent such results the carriers should deal with all claims presented prior to December 1, 1913, and all claims accruing within two years prior to the report of the Commission and filed by April 1, 1914, upon their merits without regard to the period of limitation fixed by the tariff. Bills of Lading, 29 I. C. C., 417.

§11½. Presumptions.

(a) The fact that the Carmack Amendment makes the initial carrier liable in every way for loss or damage to goods, does not affect the presumption in an action by the shipper against the terminal carrier that the goods were in good condition when received by it. Glassman v. C. R. I. & P. Ry. Co. (Iowa, 1914), 147 N. W. 757, 761.

§12. Settlements and Rights Inter Se.

(a) Since neither shipper nor initial carrier are entitled to present a claim in bankruptcy against the estate of a bankrupt consignee, while the delivering carrier is entitled to make such presentation, in an action by the initial carrier against the delivering carrier for reimbursement for a sum paid the shipper for loss sustained through failure of the delivering carrier to take up the bill of lading on delivery of the goods, the delivering carrier is not entitled to offset a sum which it claims the initial carrier might have recovered from the estate of the bankrupt. K. C. & M. Ry. Co. v. N. Y. Cent. & H. Ry. Co., 163 S. W. (Ark. 1914) 171, 174.

(b) The Carmack Amendment gives the initial carrier, after it has been required to pay the loss, a remedy over against the particular connecting carrier causing the loss, for the amount paid by the initial carrier as evidenced by "any receipt," etc. The receipt mentioned, in the absence of fraud, or such gross negligence on the part of the initial carrier in making settlement with the shipper as would constitute a legal fraud, would be sufficient evidence to justify a recovery by the initial carrier against the connecting carrier of the amount shown by the receipts. K. C. & M. Ry. Co. v. N. Y. Cent. & H. R. Ry. Co. (Ark. 1914), 163 S. W. 171, 174.

(c) The general purpose of the Interstate Commerce Act and the results

sought to be accomplished thereby are entirely different and distinct from those of the Carmack Amendment; imposing liability on the initial carrier, is limited to carriers receiving property for transportation from a point in one state to a point in another state. When Congress extended the liability of the initial carrier by making it liable for the default of its connections, it sought to compensate for this additional burden by giving it a right of recovery over against its connection through whose default the loss occurs, and in case of a shipment to a foreign country the right to such recourse would not be available. Burke v. G. C. & S. F. Ry. Co. (1914), 146 N. Y. S. 794, 798.

(d) The delivering carrier compelled to pay a loss, has the same redress over against a preceding carrier on whose line the loss occurred that it had before the adoption of the Carmack Amendment. Duvalle v. L. W. R. R. Co. (La., 1914), 65 S. O. 104.

§13½. Time to Bring Suit.

(a) The stiuplation in a shipping contract to the effect that in case of loss or injury to the property transported an action for recovery must be brought within a stipulated time is subject to waiver and estoppel by the parties. Donohoo Horse & Mule Co. v. Missouri K. & T. Ry. Co. (Kan. 1915) 149 Pac. 436.

§13⅝ Waiver of Claims.

See §13½ (a); Supra.

(a) A provision in a livestock contract which provides "that the second party hereby releases and waives any and all cause of action for damages that may have accrued to him by any written or verbal contract prior to the execution hereof," is expressly forbidden by the act of Congress, approved February 19, 1903, known as the Elkins Act, amending the act of 1887 (32 Statutes at Large, p, 847, c, 708; U. S. Comp. St. Supp. 1911, p. 1309), declaring it "unlawful for any person, persons, or corporation to offer, grant or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced." In the nature of things, damages which accrue from breaches of contracts such as here contemplated are different and vary in amounts. Necessarily what shippers waive in executing such a contract differ on each shipment and on many, if not most, there are no damages to waive. If the contract for carriage exacted more in money or property for a like service from one person than from another, this constituted a discrimination, and such is the necessary consequence of inserting this clause in the contract. True, all carriers are required to file copies of contracts for shipment of different classes of freight with the Interstate Commerce Commission, but neither this, nor even the approval of the commission, lends any sanctity to terms improperly inserted therein and contrary to the provisions of the laws enacted by the Congress. J. W. Stewart & Son v. C. R. I. P. Ry. Co. (Ia. 1915), 151 N. W. 485, 487.

III. EVIDENCE.

§13¾. In General.

(a) Shipper declaring false value to secure reduced rate is estopped, in case of loss or damage, from denying correctness of value given. In re Express Rates, 28 I. C. C., 132, 138.

(b) In an action against an initial carrier which made no through rate for loss of goods while in the custody of a connecting carrier which published a rate based on value, with limitation of liability thereto, evidence tending to show that defendant's rates were based partly upon the rate of the connecting line, and that plaintiff had a thorough knowledge thereof and contracted with reference thereto, is properly admissible. Glenlyon Dye Works v. Interstate Exp. Co. (R. I. 1914), Atl. 5, 9.

(c) In an action against an initial carrier for loss or damage to goods while in the custody of a connecting carrier, evidence by the defendant as to the course of dealings between the parties, given in support of its contention that it was simply plaintiff's agent in transporting the goods to the connecting carrier, is not prejudicial to plaintiff, where the court has held that defendant

as an initial carrier undertook the through transportation of the goods and was liable to plaintiff for loss throughout the transit thereof. Glenlyon Dye Works v. Interstate Express Co. (R. I. 1914), 91 Atl. 5, 9.

(d) By force of the Carmack Amendment, the delivery to, and acceptance by, the shipper of such a bill of lading constitutes it a binding contract on his part, so far as the valid provisions thereof are concerned, even if he does not know of the stipulations contained therein, and has not by any act, except the mere acceptance of the bill, signified his assent to them. Spada v. Pennsylvania R. Co., (N. J., 1914), 92 Atl. 379, 381.

(e) It is doubtful whether, under the provisions of the Interstate Commerce Act, and in view of the fact that the form of the bill of lading under which this shipment was made was approved by the Interstate Commerce Commission, the carrier has power to waive its provisions. Davenport v. C. & O. Ry. Co., 129, N. Y. Sup. 865, 866.

(f) The purpose of a notice of loss condition in the contract was, of course, to give the carrier timely notice of the condition of the stock and of the assertion of the claim for damages and opportunity to investigate the matter while the facts were fresh and accessible. This being the purpose of the condition, it is as well satisfied when the agent of the carrier, to whom notice might be given, has actual knowledge of the condition of the stock at the time of their delivery at the point of destination and of the fact that a claim for damages will be asserted as it would be by the service of a written notice; and so if the agent, to whom written notice might be given, induces the owner by his conduct or assurances to believe that written notice will not be necessary, and, acting upon this belief, the owner fails to give the written notice, the carrier should not be allowed to defeat his claim because he failed to give the written notice. There is no particular sanctity about a contract for the shipment of live stock or about the conditions in such a contract, nor is there any reason why the same rules of law that govern other persons in their relations to contracts and their right to waive provisions inserted for their benefit should not be applied to the parties to these contracts. In private affairs, uncontrolled by statute, there is scarcely any provision in a contract that a party to the contract may not waive if he pleases to do so. The general rule being that a party to a contract, who is fully advised of the facts will not be permitted, by his conduct manifesting a waiver, and upon which the other party relied and had a right to rely, to prejudice the rights of the other party by asserting that the stipulation could only be waived in writing, and this well-established principle should be applied to contracts like this. Howard & Callaghan v. I. C. R. R. Co. (Ky., 1914), 171 S. W. 442, 445, 446.

(g) As shown by the undisputed evidence, the railroad agent at the place of destination was notified that the shipper would not receive the stock because of their damaged condition, and thereupon he told the shipper to take the stock and do the best he could for them, and that he would be treated right about it. The agent was also present when they were unloaded and actually saw their condition and knew the cause to which it was attributed. In addition to this, the railroad company employed and paid a veterinary to attend the stock, and the agent of the company wrote on the bill of lading the damaged condition of the stock, the cause that produced it, and that it was received by the shipper under protest. We think this conduct fully meets all of the conditions of a valid and sufficient waiver. In short, the actual notice the agent had was much fuller and more accurate than he would have had if the written notice had been given. A. T. & S. F. Ry. Co. v. Wright, 78 Kan. 94, 95 Pac. 1132; Hinkle v. Southern Ry. Co. 126 N. C. 932, 36 S. E. 348, 78 Am. St. Rep. 685; Lasky v. Southern Express Co., 92 Miss. 268, 45 South. 869. Howard & Callaghan v. I. C. R. R. Co. (Ky., 1914), 171 S. W. 442, 446, 447.

(h) Congress having assumed exclusive authority over interstate commerce, and invested the Commission with power to control rates, rules and regulations affecting the carriage of property in trade from state to state, the Commission's approval of these rates, rules and regulations is conclusive of their justice and reasonableness as between the shipper and the carrier in any litigation of this sort. Zoller Hop Co. v. So. Pac. Co., 143 Pac. 931, 935.

(i) The defendant was entitled to prove that it had filed its schedule of rates, rules and regulations with the Interstate Commerce Commission, that they were published and kept posted as

required by the Interstate Commerce Law, with the result that the shipper was bound to know their contents, and cannot plead ignorance on that point. Zoller Hop Co. v. So. Pac. Co., 143 Pac. 931, 934, 935.

(j) In a suit in a state court for loss and damage the carrier is entitled to prove the schedules, rules and regulations under which it received the shipment and which had the approval of the Interstate Commerce Commission, that the means of knowing all about the freight tariff were open and within convenient reach of the plaintiff in the manner directed by the statute, and that the plaintiff had itself made out the bill of lading and tendered it with the hops it shipped. All this was proper to consider in any event, if the question were open, in determining whether the transaction was attended with deceit or unfairness, or was carried on in the open. Zoller Hop Co. v. So. Pac. Co., 143 Pac. 931, 933.

§14. Acts of Connecting Carrier.

(a) Where, in the course of transportation of live stock by a common carrier inferior animals are substituted for some of those originally shipped, a conversion on the part of the carrier may be presumed, and although the substitution occurs in the course of an interstate shipment, made under a contract limiting liability to an agreed valuation for each animal shipped, a recovery of damages based on the actual value of the animals would be authorized, unless the explanation offered by the carrier is sufficient to negative the idea of a wrongful conversion, and of negligence amounting to gross or wanton negligence on the part of the carrier. Whether the explanation is sufficient is a question for the jury. N. C. & St. L. Ry. Co. v. C. V. Truitt Co. (Ga. App. 1914), 82 S. E. 465, 468.

§15. Burden of Proof.

(a) Where suit is brought against a connecting carrier in interstate commerce for damage to goods delivered to it by the preceding carrier, a prima facie case is made for the plaintiff by proof of reception of the goods by the defendant and their delivery in damaged condition. Thereupon the presumption arises that they were damaged through the negligence of the carrier sued. There is nothing in the Act of Congress fixing the liability of interstate carriers for loss or damage which would relieve them from this common-law presumption. A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ark., 1914), 78 S. E. 1019, 1022.

(b) The burden is on the connecting carrier, sued by the initial carrier to recover the amount paid the shipper for loss or damage incurred on the connecting carrier's line, to establish fraud on the part of the initial carrier in procuring a receipt from the shipper. K. C. & M. Ry. Co. v. N. Y. Cent. & H. Ry. Co. (Ark. 1914), 163 S. W. 171, 174.

(c) The provision of the Carmack Amendment that the initial carrier shall be liable for loss, damage or injury to property on the line of a connecting carrier, but that nothing therein should deprive the holder of a receipt or bill of lading of any remedy or right of action which he has under existing law, was not intended to change the common law liability of the carrier, but to affirm it, and to sustain his cause it is therefore sufficient for plaintiff to show delivery of fruit to defendant initial carrier in good condition, and receipt by the consignee in bad condition, for, at common law, that is a showing of damage caused by the carrier prima facie, and it is for the latter to relieve itself by evidence of any lawful excuse Collins v. D. & R. G. Ry. Co. (Mo. App. 1914), 167 S. W. 1178.

(d) The Carmack Amendment has not modified a rule of law that a connecting carrier is presumed to have received the shipment in good condition and would not have received the shipment had the contents been in bad condition, without making some notation to that effect and protest. Therefore, where the shipper of live stock shows that the stock were in good condition when delivered to the initial carrier he can recover from the terminal carrier for damage. It is the business of the terminal carrier to prove that it did not cause it. Eastover Mule & Horse Co. v. A. C. L. R. Co. (S. Car.), 83 S. E. 599, 600.

§17. Parties and Pleadings.

(a) In an action against an initial carrier for losses due to delay in the shipment of a carload of strawberries, it is error to refuse to allow the defendant to prove its published tariffs filed with the Commission containing regulations providing for a higher rate if the ship-

ments were not made subject to the terms and limitations of the bill of lading. N. Y. P. & N. Ry. Co. v. Peninsula Produce Exchange (Md., 1914), 89 Atl. 433, 437.

(b) In an action under section 20 against an initial carrier, it is not necessary that the declaration over that plaintiff is the lawful holder of the bill of lading issued by defendant for the receipt and carriage of the property. Bodden v. P. B. & W. R. R. Co. (Del. 1914), 91 Atl. 209.

MANDAMUS

See Courts, §3, §13 (c); Financial Operation, §1 (a).

MARKET COMPETITION

See Discrimination, §3 (r); Equalization of Rates, §4 (5), §6; Evidence, §14 (1), (r), §31½, §32; Long and Short Hauls, §8; Reduced Rates, §6½.

MARKING AND ADDRESSING

See Classification, §14; Express Companies, §32.

MEXICO.

See Facilities and Privileges, §15 (w).

(a) Storage in transit at El Centro, Cal., on grain from Mexico denied where necessity for such storage lies primarily in political conditions for which carriers are not responsible and over which they have no control. Newark Grain Co. v. S. P. Co., 30 I. C. C. 431, 433.

MILEAGE RATES

See Distance Rates; Passenger Fares and Facilities, §6.

MINIMUMS.

I. APPLICATION OF MINIMUM.
§1. In general.
§2. Effect of not publishing.
§3. Furnishing car of minimum ordered.
§4. Larger car furnished than ordered.
§5. Minimum higher than car capacity.
§6. Mixed carloads.
§7. Reasonableness and discrimination.
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§9. Follow-lot shipments.
§10. Tank cars.
§11. Reparation.

CROSS REFERENCES

See Cars and Car Supply; Classification, §4 (e); Evidence, §13 (1), (y); Peddler Cars, (a), Refrigeration, §4 (b), §7; Reparation, §16 (no); Through Routes and Joint Rates, §16 (d), (e); Weights and Weighing.

I. APPLICATION OF MINIMUM.

§1. In General.

(a) Car not found to have been loaded to "full visible capacity" and charges correctly assessed on basis of minimum applicable to car, which was greater than actual weight. Lamb-Davis Lumber Co. v. G. N. Ry. Co., Unrep. Op. A-235.

(b) Because there is an identity of commodity at the point of origin it does not follow that there is an identity of the elements of carriage to destination when the raw material is milled into different products. It may be that two commodities not identical may be of such substantially like character as to fall within the terms of section 2, but that is not the case where the products are corn starch and other corn products; since starch is a more expensive product and its market price higher than that of the other products. The requirements of carriers fixing a minimum weight of 40,000 lbs. to the Ohio River, while the minimum beyond was but 30,000 lbs., did not necessarily contravene section 7, prohibiting an arrangement whereby carriers might prevent the carriage of freight from being and being treated as one continuous carriage from origin to destination. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 606.

(c) It is unsound in principle to encourage car fitting or use of dunnage in order to secure minimum loads, and to approve of the payment of allowances

to offset expenses thus incurred. Dunnage Allowances, 30 I. C. C. 538, 546.

(d) Loading of apples is from 180 to 185 barrels per car. Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 147.

(e) Loading of beer is less than 30,000 pounds. Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545.

(f) The practice of counterbalancing rate changes by readjustments in minimum weights cannot be regarded as well founded. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 341.

(g) A lower rate may properly apply on a higher carload minimum. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 630.

§3 Furnishing Car of Minimum Ordered

See Cars and Car Supply, §8.

§4. Larger Car Furnished than Ordered.

See Cars and Car Supply, §8.

(a) Tariff held to be unreasonable in that it did not contain provision that when a shipper orders a car of greater dimensions than that furnished by the carrier a smaller car may be used and charges collected on basis of actual weight, when car furnished is loaded to its full visible capacity. Hastings Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-399.

(b) Larger car furnished than one ordered. Minimum weight for size of car ordered should have applied. Reparation awarded. Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-588; Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-618.

§5. Minimum Higher than Car Capacity.

(a) Charges collected on shipment of 5,338 feet of oak lumber based on weight of 58,000 pounds. The evidence shows that the weight of the shipment did not exceed the carload minimum weight of 34,000 pounds. Reparation awarded. Hall Lumber & Tie Co. v. C. & O. Ry. Co., Unrep. Op. A-279.

(b) To maintain a minimum weight that is impossible of loading is not justifiable and a reasonable minimum prescribed. Squire Dingee Co. v. C. & E. I. R. R. Co., Unrep. Op. A440.

(c) Car furnished had some framework placed therein by former shipper. Complainant should have removed it or made a request to the carrier. Carrier not at fault for not being able to load full minimum weight. Dorschel Produce Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A489.

(d) Complainant attacked the rate on calves and carload minima of 22,000 lbs., in 36 foot cars, applicable thereto from Gretna and other Texas shipping points to points in Colorado, Kansas, Illinois, and other states as discriminatory compared with minima of 17,000 lbs. on similar shipments from Refugio, Tex., to New Orleans, La., and St. Louis, Mo. It appeared that 17,000 lbs, was the maximum loading capacity of a 36 foot car. HELD, that the 22,000 lbs. minimum applicable to cattle was unjustly discriminatory when applied to calves and that the minimum on calves in carloads should not exceed 17,000 lbs. No finding made as to rates. Kibbe v. A. & S. Ry., 33 I. C. C., 415.

(e) Minimum weight of 60,000 pounds as applied to cars having marked capacities of less than 60,000 pounds was unreasonable to extent it exceeded marked capacities. Lamson Bros. & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-882.

§6. Mixed Carloads.

See Mixed Carloads.

(a) Charges on mixed merchandise in carloads should have been paid on the highest class rate with the lowest minimum applicable to any article in the car taking that rate. Sheldon & Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A-276.

§7. Reasonableness and Discrimination.

See Advanced Rates, §2½ (z), §17 (k), (nn); Equalization of Rates, §2 (e).

(a) A carload minimum weight which is reasonably adapted to the needs of the carriers and the great majority of shippers will not be increased because one shipper, by the expenditure of exceptional effort and expense, finds himself able to load more heavily than can his competitors; neither will this Commission under such circumstances prescribe a lower rate per 100 lbs. conditional upon the use of a higher minimum weight as the measure of the carload. Rates on Excelsior and Flax Tow from St. Paul, Minn., 29 I. C. C. 640.

(b) Minimum weights of 41,500 lbs. on wooden lard tubs found unreasonable and lower minimum established. Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co., 28 I. C. C. 237, 242.

(c) Minimum weights established by carriers are intended reasonably to comport with loading capacity of cars as to particular commodities to which they relate. Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co., 28 I. C. C. 237, 242.

(d) Charging complainant on minimum basis of marked capacity of car on shipments of stone and charging competitors on minimum basis of 20 tons is an unjust discrimination. Balfour Quarry Co. v. S. Ry. Co., Unrep. Op. A-138.

(e) That the full use of transportation equipment furnished by carriers shall be made by shippers of heavy and low-grade traffic, such as crushed stone, is not an unreasonable requirement. Balfour Quarry Co. v. S. Ry. Co., Unrep. Op. A-138.

(f) Proposed increase from 30,000 to 33,000 lbs. in the minimum carload weight on potatoes moving in the West and Northwest during the winter not found to be unreasonable or unjustly discriminatory. Order of suspension vacated. Potato Carload Minimum Weights, Unrep. Op. A-147.

(g) Minimum weight upon which defendant based its rates for the transportation of fuel wood from Hawkins, Wis., to stations in Illinois, found to have been unreasonable. Reparation awarded. Northern Wood Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. A-200.

(h) Car not found to have been loaded to "full visible capacity" and charges correctly assessed on basis of minimum applicable to car, which was greater than actual weight. Lamb-Davis Lumber Co. v. G. N. Ry. Co., Unrep. Op. A-235.

(i) Rates and minimum weights on slab wood and edgings from points in Wisconsin and Michigan to points in Illinois, and from Michigan to Wisconsin, found unreasonable. Reasonable rates and minimum weights prescribed for the future. American Coal & Supply Co. v. C. & N. W. Ry. Co., Unrep. Op. A-255.

(j) The Commission's rulings with reference to furnishing two small cars in lieu of a large car ordered by a shipper relate only to cases where the tariffs provide graduated minima for cars of different sizes, and do not relate to commodities, as to which a specified minimum applies to cars of all sizes. Smith System Heating Co. v. G. N. Ry. Co., Unrep. Op. A-296.

(k) The Commission considered a proposed increase of from 10,000 to 15,000 lbs. in minimum weight of special refrigerator cars on shipments of butter, eggs, dressed poultry, fresh fish and fresh meat from Chicago to southern territory, while leaving in effect a 10,000-lb. minimum from St. Louis. Rates on these commodities are usually based on any-quantity rates. They must be moved in refrigerator cars and the I. C. R. R. maintains from Chicago to most of the points in controversy a regular refrigerator service; that is, if delivered at a freight house they will be transported under refrigeration in cars with other commodities of other shippers. Besides, the I. C. R. R. operates a special refrigerator service, in which a special car is set apart for a shipper, with a minimum weight prescribed. In official and western classification territory the minimum is 15,000 lbs., while in the south it runs from 5,000 to 10,000 lbs., and in the southwest and far west usually 10,000 lbs. While no carload rate applies to these commodities, this special service is in effect a substitute. The car is put at the exclusive disposal of the shipper; placed where he directs and loaded by him, sealed up, taken to destination and unloaded at the convenience of the shipper. All these commodities readily load to 15,000 lbs. Respondents offered to increase the minimum on shipments from St. Louis to 15,000 lbs. HELD, that the increase from 10,000 to 15,000 lbs. as the minimum weight at which special refrigerated cars will be furnished for this service is reasonable, provided respondents make a similar increase at St. Louis. Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349.

(l) Provision for minimum weights for different sizes of cars preferable over flat per-car rates. Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 27.

(m) Complainant's contention that woven wire fencing should be accorded the same rate as wire, iron or steel, in bundles or coils, or on reels, and should be subject to the same minimum weight, not sustained. Orgill Brothers & Co. v. L. & N. R. R. Co., Unrep. Op. A483.

(n) Higher minimum weight on c. l. shipments of ice from Omaha than from Ashland, Neb., to Kansas City, Mo., found unreasonable. Hammond Brothers v. C. B. & Q. R. R. Co., Unrep. Op. A502.

(o) Higher minimum weight on c. l. shipments of ice from Omaha than from Ashland, Neb., to Kansas City, Mo., found unreasonable. Hammond Brothers v. C. B. & Q. R. R. Co.. Unrep. Op. A502.

(p) Complainant attacked the minimum weights on lumber in mixed carloads, 30,000 lbs. in cars less than 36 ft. in length and 34,000 lbs. in cars 36 ft. or more, on shipments from Ohio and Mississippi river crossings to central freight association and trunk line territory as unreasonable and discriminatory. Complainant's shipments were of lumber, lath, and shingles necessary to carry out mail-order house plans; most shipments containing only the materials required for a single structure, and weights varying from 2,310 to 112,530 lbs. The average shipments of lumber moving over defendants' lines weighed 47,000 lbs. HELD, that the increased minimum weights attacked were not shown to have been unreasonable or discriminatory. Complaint dismissed. Funck Lum. Co. v. B. & O. S. W. R. R., 33 I. C. C. 511.

(q) Carload rate and minimum as applied to two iron beams from Ft. Wayne, Ind., to Marathon, Iowa, not found unreasonable. American Steel Dredge Co. v. American Exp. Co., Unrep. Op. A-807.

(r) Rate of $1.30, minimum 24,000 pounds, or rate of $1.50, minimum 20,000 pounds, whichever made lower charge, should have been applied to gas cooking stoves from various points east of Missouri River to San Francisco, Cal. Reparation awarded. Boardman Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-835.

(s) Carload minimum on wood in bags was made 10,000 pounds, and on wool in bales 20,000 pounds. Reparation awarded on shipments moving under carload and less than carload basis. American Woolen Co. v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A-846.

(t) It is not established that 24,000 pounds of windmills and towers can be loaded in a car of average size. Duplex Mfg. Co. v. C. M. & St. P. Ry. Co. Unrep. Op. A-858.

(u) Minimum weight applied to cars having marked capacities of less than 60,000 pounds in connection with wheat from Chicago, Ill., to points east, found unreasonable to extent that it exceeded marked capacities of cars. Lamson Bros. & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-882.

(v) Minimum weight applicable to through rate on peanuts from Suffolk, Va., to Muskogee, Okla., exceeded minimum applicable to local rate from Suffolk to Memphis, Tenn., used as a factor in construction of through rate. Reparation awarded. Goodner-Malone Co. v. M. V. R. R. Co., Unrep. Op. A-907.

(w) Complainant attacked the rate of $10 per net ton, minimum 50,000 lbs on coke in carloads from Durham and Chickamauga, Ga., to Pacific Coast terminals as unreasonable and discriminatory compared with a rate of $9 from the Birmingham, Ala. district to the same destinations. From the first named points of origin the haul to either the Memphis or the New Orleans gateway was over two or more lines; from the Birmingham district there was generally a one-line haul, though from some points the haul was over the rails of two or more carriers. Birmingham was 73 miles less distant from the Pacific Coast. Shipments from all points of origin were subject to the same minimum; but defendants did not have sufficient equipment for 50,000 lb-loads. The proposed rate of $8 from Chickamauga to Los Angeles and San Francisco, distant 2288 miles and 2765 miles respectively, would yield but 3.49 and 2.89 mills per ton-mile. HELD that the rate from Durham and Chickamauga was discriminatory to the extent that it exceeded the rates from the Birmingham district. It was unreasonable to base charges on a 50,000 lb. minimum where cars furnished could not be loaded to that weight, and tariffs should provide that in such cases the marked capacity should govern. Durham Coal & Iron Co. v. C. of G. Ry., 34 I. C. C. 10.

(x) A minimum carload weight is unreasonable when the cars in which the shipments are made are incapable of being loaded to that weight. Tariffs should provide that in such cases the

marked capacity of the car used will govern. Durham Coal & Iron Co. v. C. of G. Ry., 34 I. C. C. 10, 12.

§11. Reparation.

(a) Charges collected on shipment of 5,338 feet of oak lumber based on a weight of 58,000 lbs. The evidence shows that the weight of the shipment did not exceed the carload minimum weight of 34,000 lbs. Reparation awarded. Hall Lumber & Tie Co. v. C. & O. Ry. Co., Unrep. Op. A-279.

(b) Minimum carload weight of 36,000 pounds on steel rails from Omaha, Neb., to Mystic, S. D., changed to 44,800 pounds subsequent to movement of shipments, and reparation awarded on basis of latter. D. & W. Ry. Co. v. R. C. B. H. & W. R. R. Co., Unrep. Op. A-646.

MISBILLING

See Crimes, IV; Loss and Damage, §13¾ (a).

MIXED CARLOADS

See Classification, §7; Evidence, §34¼, Facilities and Privileges, §15 (v), (4w); Forwarders, (a); Minimum, §6; Reparation, §15 (40), §16 (aa), §21 (a); Tariffs, §7 (i); Weights and Weighing, §5 (d).

MONOPOLIES.

I. IN GENERAL.

(a) Corporations which engage in a conspiracy to limit the output and fix the price of lumber to be shipped from one state and sold in another, are amenable to the state anti-trust law, and cannot raise the plea that the acts alleged to have been done in contravention of law are the same acts over which the Interstate Commerce Law applies. State v. Arkansas Lumber Co. (Mo. 1914), 169 S. W. 145, 171.

(b) Neither the consolidation of the New York Central and the Lake Shore & Michigan Southern nor the exchange of bonds on the basis of increased interest rate indicated, incident thereto, would offend any federal statute. Proposed Bond Issue by N. Y. C. & H. R. R. R. Co., 30 I. C. C. 147, 151.

MOOT QUESTION

See Courts, §6 (a).

NARROW GAUGE RAILROADS.

See Branch Lines, §6 (a); Interstate Commerce Commission, §1 (g).

(a) Less-than-carload rates assessed upon weight of two shipments in excess of maximum loading of narrow-gauge cars, which were subsequently loaded into standard-gauge, found unreasonable. Thompson v. A. T. & S. F. Ry. Co., 31 I. C. C. 138, 141.

NESTED

See Classification, §13 (b), §16 (d), §22 (d).

NON-AGENCY POINTS

Routing or Misrouting, §2 (c).

NOTICE

See Demurrage, §6 (a); §16; Evidence, §39; Loss and Damage, §11, §13¾ (g); Reconsignment, §5½; Tariffs, §3 (3); Transportation, §1 (i), §1 (k); Transportation, §1 (l), §6, §6½.

ORDER-NOTIFY SHIPMENTS

See Bills of Lading, V; Tariffs, §7 (h).

ORIGIN OF TRAFFIC

See Advanced Rates, §5 (8); Discrimination, §10; Evidence, §40½; Proportional Rates, III (d); Reasonableness of Rates §22; Reconsignment, §2 (i), §3 (c); Through Routes and Joint Rates, §1 (b), (c), §4 (b), §9, §25 (f), VI; Water Carriers, §6 (g).

OVERCHARGES.

See Courts, §11 (a), §11 (d), (j), §13 (d).

(a) Since the shipper's right to recover for excessive charges made on interstate shipments depends entirely upon the rights given by the terms of the In-

terstate Commerce Act, it must appear from the complaint that such rates are in excess of those permitted as reasonable by the Commission. Geraty v. A. C. L. R. R. C., 211 Fed. 227, 229.

(b) In a proceeding to recover on a reparation order the finding of the Commission that the rate charged was not unreasonable and fixing the excess over the legal rate is prima facie correct, if not conclusive, and if no evidence to the contrary is offered, and both parties ask peremptory instructions, verdict for plaintiff is properly directed. St. L. & S. F. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 594.

(c) In an action to recover reparation awarded, a finding of the Commission that the plaintiff was charged an unreasonable rate and an order awarding him damages for the sums paid over that accruing under the reasonable rate, do not make a prima facie case, since others than the shipper may have sustained the actual pecuniary loss, and the statute authorizes the recovery only of actual damages, not a penalty. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 797.

(d) A suit for overcharges on interstate shipments can be brought against a carrier in a United States court without first applying to the Interstate Commerce Commission, since such action simply involves the construction and application of the published tariff. Gimbel Bros., Inc. v. Barrett, 215 Fed. 1,004.

(e) Interest on overcharges runs from the day of the payment of the overcharge. Gimbel Bros. v. Barrett. 218 Fed. 880, 887.

(f) It has been suggested that the court has power to construe a tariff and to give judgment for overcharges without any prior determination by the Interstate Commerce Commission. Gimbel Bros v. Barrett, 218 Fed. 880, 886.

(g) A federal court has jurisdiction to construe a tariff and to give judgment for overcharges without any prior determination by the Interstate Commerce Commission. Gimbel Bros. v. Barrett, 218 Fed. 880, 886.

(ga) If carriers actually collect charges to which they are not entitled they should pay interest for the use as well as refund the principal itself. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 395.

(h) It is the duty of the consignee to see that the freight paid by him is correct and to file any claim for overcharge or other unreasonable exaction. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 394.

(i) Overcharges are charges assessed higher than those lawfully applicable. Beekman Lumber Co. v. S. L. B. & S. Ry. Co., Unrep. Op. A-119.

(j) Defendants charged rates in excess of their published tariff rates for shipments of grain and grain products originating at various points and moving via Peoria and Alton, Ill., to Birmingham and Montgomery, Ala., and to Brownsville, Stanton, Mason, Gallaway and Bells, Tenn. Reparation awarded. Bartlett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A-203.

(k) Reparation awarded on shipments of cotton from Timmonsville, S. C., to Maiden and Catawba, N. C., charges assessed being in excess of those lawfully applicable. Mason v. A. C. L. R. R. Co., Unrep. Op. A-247.

(l) A state court has no jurisdiction of an action to recover overcharges, where it is alleged that the carrier published a rate of 1c per 100 lbs., with a minimum charge of $5 per car, under which it should have furnished cars of a carrying capacity of 50,000 lbs., but instead was furnished cars of a capacity of 40,000 lbs., which was insufficient to enable them to earn $5 at the given rate, since such allegations show a contention relating to the lawful construction of an interstate tariff. St. Louis Southern Ry. Co. v. J. S. Patterson Const. Co. (Ind. 1914), 104 N. E. 512, 516.

(m) Collection of charges on cars not subject to demurrage held to be an overcharge and may be refunded without order of Commission. New York Hay Exchange Asso. v. L. V. R. R. Co., 29 I. C. C. 90, 92, 93.

(n) It is a good defense to an action in court to recover back charges on interstate freight in excess of those permitted by state statute, and a contract between state and carrier, that they were collected according to rates lawfully filed and published according to the provisions of the Interstate Commerce act, it being settled by a long line of uniform decisions of the United States Supreme Court that,

once schedules are filed and published, the sole remedy of the shipper is by complaint to the Commission. This jurisdiction cannot be infringed upon by previous contract of parties nor by state statutes. both of which must yield to the power of Congress to act upon the subject. E. D. Clough & Co. v. B. & M. R. R. (N. H., 1914), 90 Atl. 863, 865.

(o) A state court has jurisdiction of an action by a shipper to recover excessive charges on an interstate shipment, paid under protest. Mott Store Co. v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 322.

(p) Reparation awarded on basis of lower rate, which should have applied on logs from Red Bay, Ala., to Paducah, Ky., when manufactured products were shipped from Paducah via defendant's line. Paducah Box & Basket Co., Inc., v. I. C. R. R. Co., Unrep. Op. A-582.

(q) Rate charged on filing cabinets from Chattanooga, Tenn., to Omaha, Neb., found to have been unreasonable and in excess of lawful rate. Claim barred by statute and no order for reparation entered. Montague Mailing Machinery Co. v. N. C. & St. L. Ry., Unrep. Op. A-626.

(r) Under section 16 of the Act the Commission cannot grant reparation for overcharges which accrued more than two years before the filing of complaint; but it does not follow that a carrier is on that account relieved from its obligation, prescribed by section 6, to adhere to its established tariffs by neither collecting nor retaining rates that are more or less or different from the rates therein contained. Corporation Commission of Oklahoma v. K. C. M. & O. Ry. Co., 32 I. C. C. 384, 385.

(s) A suit can be brought in a state court to recover overcharges. Virginia-Carolina Peanut Co. v. A. C. L. R. Co. (N. C. 1914), 82 S. E. 1, 5.

(t) Excess charges based on erroneous weights are analogous to overcharges. National Pole Co. v. M. & I. Ry. Co., 33 I. C. C. 372, 373.

(u) Overcharges accrued more than two years before complaint was filed and damages denied. Corp. Comm. of Oklahoma v. K. C. M. & O. Ry. Co. 32, I. C. C., 384, 385.

(v) Reparation awarded on basis of subsequently established joint through rate and for overcharge on two shipments of canned goods from Baltimore, Md., to Popular Bluff, Mo. Barnes Brocer Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-769.

(w) Canned goods from Baltimore, Md., to Popular Bluff, Mo., found to have been overcharged and reparation awarded. Question of misrouting held immaterial. Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-769.

(x) Overcharges involved in connection with whiskey from Chicago, Ill., to Ray Junction, Ariz., thence reconsigned to Los Angles, Cal. Reparation awarded. Goodhart-Hartman Co. v. S. P. Co., Unrep. Op. A-781.

(y) Rates charged on oats from Peoria, Ill, to Birmingham, Ala., were in excess of those lawfully applicable under tariffs. Reparation awarded. Former decision followed. Bartlett Co. v. C. P. & St. L. R. R. Co., Unrep. Op. A-791.

(z) Higher rate charged on cottonseed meal and cottonseed cake from Baton Rouge, La., to New Orleans, for export, than rate lawfully applicable. Reparation awarded. New Orleans Board of Trade v. L. R. & N. Co., Unrep. Op. A-799.

(aa) Reparation awarded on account of misrouting and overcharges on lumber from Popular Bluff, Mo., to Coffeyville, Kan. Fullerton-Powell Hardwood Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-822.

(bb) Overcharges involved in connection with back-haul charges from Hammon, Okla., to Brinkman, Okla., on part carload of farm wagons. Corporation Commission of Oklahoma v. W. F. & N. W. Ry. Co., Unrep. Op. A-828.

(cc) Rate of $1.50 on gas cooking stoves from various points east of Missouri River to San Francisco, Cal., found unlawful to extent it exceeded rate of $1.30 applying to other cooking stoves. Reparation awarded. Boardman Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-835.

(dd) Rate on alfalfa hay from Memphis, Tenn., to Mt. Airy, N. C., reconsigned from Harriman, Tenn., found unlawful and reparation awarded. Alliance Alfalfa Hay Co. v. S. Ry. Co., Unrep. Op. A-837.

(ee) Reconsignment charge on certain shipments of grain at Kansas City, Mo., moving prior to cancellation of provision

for absorption of same, found to have been unlawful. Reparation awarded. Brodnax & McLiney v. St. L. & S. F. R. R. Co., Unrep. Op. A-848.

(ff) Rate on mattocks, picks, sledges and crowbars from Wheeling, W. Va., to San Antonio, Tex., found to be unlawful to extent it exceeded the combination of rates to and from Loyalhanna, Pa. Reparation awarded for overcharge. Peden Iron & Steel Co. v. S. P. Co. A. S. S. Lines, Unrep. Op. A-869.

(gg) Overcharges on cedar posts from Shelbyville, Tenn., to Grand Island, Nebr., of $7.50. No order for reparation entered, it not being clear that complainant is party entitled to refund. Jewett v. C. B. & Q. R. R. Co., Unrep. Op. A-878.

(hh) Rate on carload of cranberries from Wareham, Mass., to Kansas City, Mo., not found to have been in excess of that provided in tariff. Peycke Bros. Commission Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-899.

(ii) On shipment of one refrigerator, k. d., from Grand Haven, Mich., to Mt. Clare, Nebr., billed Mt. Clare, Nev.; through error, charges in excess of rate lawfully applicable were assessed. Reparation awarded. Lee-Colt-Andreesen Hardware Co. v. Crosby Transportation Co., Unrep. Op. A-944.

(jj) A suit can be brought in a state court to recover overcharges. Virginia-Carolina Peanut Co. v. A. C. L. R. Co. (N. C.), 82 S. E. 1, 5.

(kk) In cases before the Commission on complaint and answer, overcharges will be taken cognizance of only to order their payment. Such an order is not proper where complainant does not inform defendants definitely of the overcharges alleged and gives them no opportunity to investigate and answer the allegations. New Orleans Shippers' Asso. v. I. C. R. R., 34 I. C. C., 32, 33.

(ll) Complainant attacked the joint class rates on coarse grain in carloads from Iowa points to Kansas City, Mo., as unreasonable and discriminatory. Defendants, who had inadvertently collected only the lower aggregate of intermediate rates, now demanded the undercharges. Pending the hearing the joint class rates were repealed, curing the fourth section violations. The shipments as to which relief from undercharges was sought were made to members of complainants association, but by shippers not connected therewith. HELD: (1) that the joint rates were unreasonable, and waiver of their collection justified where undercharges were outstanding; (2) violations of fourth section having been cured, application for relief from such violations was denied; (3) the Commission being confined in awarding reparation to damage sustained by real and substantial parties at interstate, reparation denied. Complaint dismissed. Board of Trade of Kansas City v. C. M. & St. P. Ry. 34 I. C. C., 208.

(mm) Complainant was overcharged on shipments of roofing tile from Ludowici, Ga., to Homestead, Fla. Though complainant's contract provided for delivery to consignees F. O. B. cars at Homestead, this was not indicated in the bills of lading. Consignees paid the freight bills and remitted to complainant for the balance. The carrier, upon discovery of the overcharge, refunded to consignees. HELD, that payment of the refund to the consignee was justified; the delivery carrier being uninformed of the contract relations between shipper and consignee. Ludowici-Celadon Co. v. F. E. C. Ry., 35 I. C. C. 81.

(nn) Carriers must refund promptly all charges unlawfully collected; but possession of the freight bills is not the only competent evidence of the persons entitled to refund. If the acts of the real owner give the proposed payee the ostensible right to receive the refund, payment to the latter is valid. The consignee's acceptance of the goods and payment of the freight charges constitute it the ostensible owner of the goods or agent of the real owner. A delivering carrier uninformed of the contract relations between shipper and consignee is under no duty under the act to inquire into them. Ludowici-Celadon Co. v. F. E. C. Ry., 35 I. C. C. 81, 82.

PACKING

See Classification, §9 (a), §16.

PANAMA CANAL ACT

1. CONSTRUCTION IN GENERAL.

CROSS REFERENCES

See Absorption of Charges, §1 (c); Evidence, §2 (z), §14 (5), (dd), (xx); Water Carriers, §1 (c), §3 (j).

(a) Panama Canal likely to affect Montana grain rates. Export rates from Western ports will probably be materially lessened. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 653.

(b) Upon application under section 5 of the act to regulate commerce, as amended by the Panama Canal Act, of the Grand Trunk Railway Company of Canada to continue its interest in and joint operation of the Ontario Car Ferry Company, Limited, of Canada; HELD: That the participation of petitioner in through all-rail routes between the ports served by the ferryboat line in which it is interested makes it possible for the petitioner to compete with such ferryboat line within the meaning of section 5 of the Act as amended by the Panama Canal Act. That the facts support a finding that the existing service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance of these will neither exclude, prevent, nor reduce competition on the route by water under consideration. The Ontario Car Ferry Company will be expected to file its tariffs according to law to become effective by July 1, 1915. G. T. Ry. of Canada Operation of Car Ferry Co., 34 I. C. C. 49.

(c) Upon application of the Pennsylvania Company and the Canadian Pacific Railway Company under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal Act, to continue their interest in and joint operation of the Pennsylvania-Ontario Transportation Company; HELD: That the existence of through all-rail routes with joint rates applicable thereto in which the petitioners participate renders it possible for petitioners to compete with the boat line in which they are interested, within the meaning of the act. Upon the facts of record the continued joint interest in and operation of the Pennsylvania-Ontario Transportation Company by the petitioners herein is in the public interest and will neither exclude, prevent. nor reduce competition on the route by water under consideration. Application of the Penn. Co. under the Pan. Can. Act, 34 I. C. C. 47.

(d) Section 5 as amended by the Panama Canal Act with certain limitations makes it unlawful for any railroad to have any interest after July 1, 1914, in any water line with which it does or may compete. Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C. 168, 207.

(e) Petitioner sought authority under section 5, as amended by the Panama Canal Act, to operate beyond July, 1, 1914, a steamboat line owned by it on Lake Tahoe. Petitioner's railroad connected Truckee and Tahoe City, Cal., and its boat line made the circuit of the lake from Tahoe City. No other rail line served any point on the lake touched by the boat line; nor did petitioner's rail line serve any of such points except Tahoe City. HELD, that, as conducted, the boat line was but an extension of the rail line, and the latter did not compete with the boat line within the meaning of the act, and that petitioner's operation of the two was not in violation of section 5 as amended. Railway Ownership of Boat Line on Lake Tahoe, 33 I. C. C., 426.

(f) The fact that a rail carrier controlling a water carrier contrary to the provisions of section 5 as amended by the Panama Canal Act, may not be able to immediately dispose of its stock in the latter upon advantageous terms, does not relieve the Commission of the duty to determine whether the service of the water carrier is being operated in the interest of the public and is of advantage to the public convenience and commerce, and whether or not continued interest of the railroad in the water carrier will exclude, prevent, or reduce competition on the route by water. Ownership of the D. P. & A. Nav. Co., 33 I. C. C. 462, 466.

(g) The S. P. & S. Ry. Co. petitioned under section 5 as amended by the Panama Canal Act for a temporary extension of time during which it might retain ownership of the D. P. & A. Navigation Co. The railroad company operated a line of railway between Portland, Oreg., and Spokane, Wash., which followed the north bank of the Columbia River from Portland to Pasco, Wash., 230 miles; while the water carrier operated steamboats from Portland down the Willamette River 12 miles and up the Columbia 83 miles to the Dalles, Oreg. The O. W. R. R. & Nav. Co. followed the south bank of the river. Both the D. P. & A. Nav. Co. and the S. P. & S. Ry. served practically all towns on the north bank of the Columbia between Portland and

The Dalles, participating in both passenger and freight traffic. Via both rail lines first class rates from Portland to The Dalles were 25c, as against 22c via the boat line. Navigation of the Columbia River was obstructed at Celilo Falls, 3 miles above The Dalles; though the state of Oregon had built a portage railway around the obstructions. It appeared that boat lines operating on the upper river could not enter into arrangements for through transportation with the D. P. & A. Navigation Co. so long as the latter was controlled by the S. P. & S. Ry. HELD that the S. P. & S. Ry. Co. did and might compete with the D. P. & A. Nav. Co. within the meaning of the act; that operation of the navigation company by petitioner was not in the interest of the public, nor of advantage to the convenience and commerce of the people, and that continued ownership of the navigation company by petitioner would exclude, prevent, or reduce competition on the water route under consideration. Petition denied. Ownership of D. P. & A. Nav. Co., 33 I. C. C. 462.

(h) It will be noted that while the first part of section 1 of the Panama Canal Act in describing the carriers by water refers to "common carrier by water" it later prohibits railroad ownership or interest in "any vessel carrying freight or passengers." Hence in an application for extension of time, in which to operate a boat it is not necessary to decide whether it is a common carrier. S. P. Co. Ownership of Schooner Pasadena, 33 I. C. C. 476, 478.

(i) The S. P. Co. applied for authority to operate the steam schooner Pasadena after July 1, 1914 between certain points on the California coast. The S. P. Co. owned all the stock of the Albion Lum. Co., which owned the Pasadena. The latter operated between Albion and San Francisco, and to some extent between San Francisco and Redondo and San Pedro; being principally engaged in moving the products of the lumber company, but handled general traffic to some extent. The S. P. Co. also operated a line of railway between San Francisco and San Pedro, and owned one-half of the stock of the N. W. P. R. R. which operated a railway line between Sausalito, on the bay near San Francisco, and Willits; and also a branch from Albion to Christine, projected to connect with the main line. It was contended that the Pasadena was not a common carrier, and that consequently its operations did not come within section 1 of the Panama Canal Act. HELD (1) that so long as the line of railway between Albion and Christine was not extended so as to connect with the N. W. P. R. R. main line, the S. P. Co. did not and could not compete with the Pasadena operating between Albion and San Francisco, Cal., and that continued operation of the Pasadena between these points would not be in violation of section 5 as amended by the Panama Canal Act; (2) that in operating the boat between San Francisco and San Pedro and Redondo the S. P. Co. might unlawfully compete with the Pasadena; and (3) that if the Pasadena should in future, in operating between Albion and San Francisco, participate in joint rates applicable to, or in any arrangement for through carriage of, interstate shipments with any carrier by railway, the rates, rules, and regulations governing such shipments must be published, filed and posted as provided in section 6 of the Act. S. P. Co. Ownership of Schooner Pasadena, 33 I. C. C. 476.

(j) The G. F. & A. Ry. petitioned for leave to continue to own and operate a steamboat between Carabelle and Apalachicola, Fla. Petitioner's rail line from Richmond, Ga., to Carrabelle, the only rail line serving that point, was intersected at various points by three other railroads, with which it joined in through rates from Apalachicola. HELD that so long as their respective operations remained as before the boat line was but an extension of the rail line, and the latter did not, or might not, compete for traffic with the boat line within the meaning of the Act. G. F. & A. Ry. Ownership of Boat Line, 33 I. C. C. 632.

(k) Amendment of 1912, gives Commission jurisdiction over transportation "by rail and water through Panama Canal." Transcontinental Commodity Rates, 32 I. C. C. 449, 456.

(l) It has been suggested that the construction of the Panama Canal by the government of the United States is indicative of a governmental policy to secure all of this coast-to-coast business for the water lines, and that no adjustment of rates by the rail lines should be permitted which will take away traffic from the ocean carriers which normally might be carried by them. This suggestion, however, loses force under the consideration that the Panama Canal is but one

of the agencies of transportation that the Government of the United States has fostered between the Atlantic Coast and the Pacific. The government has from the beginning of railroad construction in the United States encouraged their construction and operation by private capital and enterprise. Some of these transcontinental lines would not have been built had it not been for the liberality the government extended to them at the time of their construction. As we view it, the Panama Canal is to be one of agencies of transportation between the east and the west, but not necessarily the sole carrier of the coast-to-coast business. If the railroads are able to make such rates from the Atlantic seaboard to the Pacific Coast as will hold to their lines some portion of this traffic with profit to themselves, they should be permitted so to do. The acceptance of this traffic will add something to their net revenues, and to that extent decrease, and not increase the burden that must be borne by other traffic. It will also give the shippers at the coast points the benefit of an additional and a competitive service. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 621.

(m) The "existing specified service by water" designated in the Act is not determined or measured by the character of the several shipments carried, but by the operation of vessel or vessels. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 699.

(n) Upon petition of the Southern Pacific Company, under section 5 of the act, as amended by the Panama Canal Act, for an extension of time during which petitioner might retain ownership in the Pacific Mail Steamship Company. HELD, (1) The words "may compete for traffic" as used in the act do not mean a vague possible, though improbable competition; but mean a probable, potential competition, as when the water line is entirely divorced from the railroad. (2) The competition referred to is "for traffic." There is no limitation or qualification of these words. They therefore cover all interstate coastwise or foreign traffic. (3) The Pacific Mail Steamship Company, operating boats between San Francisco, Cal., and Balboa or Colon, the termini of the Panama Canal, may compete for coastwise interstate traffic between points in the United States; for traffic between points in the United States and points in Mexico; and for traffic between points in the United States and points in foreign countries, with the Southern Pacific Company's rail lines from San Francisco. (4) The "existing specified service by water" designated in the act is not determined or measured by the character of the several shipments carried, but by the operation of vessel or vessels. (5) The Commission is without power to grant any extension of time as to vessel or vessels operating or to operate between San Francisco and Colon, for the reason that that service by water would be "through the Panama Canal." If it shall be made to appear that certain specified vessel or vessels will operate no farther than Balboa, the Commission could, as to such vessel or vessels, grant an extension of time. (6) From the record it appears that the service proposed, other than that through the Panama Canal, would be in the interests of the public, and of advantage to the convenience and commerce of the people, and that its continuance would neither exclude, prevent, nor reduce competition on the route by water under consideration. (7) In every case in which extension of time is granted under section 5 of the act, the rates, schedules, and practices of the water carrier, governing traffic subject to the act, must be subject to all of the provisions of the act in the same manner and to the same extent as is the rail carrier controlling or interested in such water carrier. (8) Record held open for 60 days, within which petitioner may, if it so elects, file amendment to the petition as to boats that will go no farther than Balboa. Application S. P. Co. in Re Operation S. S. Co., 32 I. C. C. 690.

(o) The Commission is merely an administrative agency to execute the Panama Canal Act, passed in pursuance to a public policy established by Congress. This policy, as indicated in the Act, includes bringing about a discontinuance of railroad ownership and control of water lines, except when, after investigation, the Commission is of the opinion that such existing specified service by water, other than through the Panama Canal, is being operated in the interests of the public, and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water consideration. If, therefore, it be found that a service considered, other than that through the Panama Canal, is operated in the inter-

ests of the public and is of advantage to the convenience of the people, and that its continuance will neither exclude, prevent, nor reduce competition on the route by water, the Act contemplates authorizing a continuance of the service, even though there is, or may be, some measure of competition between petitioner and the steamship line. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 698.

(p) The Panama Canal Act says "may compete," that is, may compete if the railroad ownership is eliminated. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 695.

(q) The competition referred to in the Panama Canal Act is "for traffic." There is no limitation or qualification of these words. They therefore cover all interstate coastwise or foreign traffic. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 694.

(r) The language "does or may compete for traffic" and "possibility of competition" is strong and significant. Considering the whole act, and its manifest purpose to dissociate railroads from competing water lines as described therein, these phrases evidently mean that one purpose of the inquiry by the Commission shall be to ascertain whether under existing conditions there is competition or whether there may be competition if the railroad interest in the water carrier or vessel is eliminated. This section of the Panama Canal Act indicates, among other things, a clear, unmistakable policy, adopted by Congress, to separate from railroad ownership, control, or influence, such common carrier water lines, and such vessels, as may, when thus separated, compete with the present owning or controlling companies, except where upon investigation, it is found by the Commission that the existing service by water, other than through the Panama Canal, is being operated in the interest of the public, is of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition on the route by water. This being so, a construction of the Act must be adopted which will properly and effectively carry out the purpose of Congress. The Commission may not nullify or weaken the force of the plain intendment of the Act for any reasons, however plausible they may appear to be. The words "may compete for traffic" do not mean a vague, possible though improbable competition, but mean a probable, potential competition, as when the water line is entirely divorced from the railroad. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 693.

(s) Where commodities are shipped from one coast of the United States or from a foreign country to the Canal Zone, thence via the Panama Railroad and a steamship line to the other coast of the United States, the latter carrier is engaged in interstate or foreign commerce, as the case may be. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 692.

(t) Under section 5 as amended by the Panama Canal Act, the Commission was asked to determine (1) whether the S. P. Co. and the P. M. S. S. Co. were actually or potentially competitive, (2) whether the P. M. S. S. line might be lawfully operated by the S. P. Co. between San Francisco, Cal., and Balboa and Colon in the Canal Zone, (3) whether such operation would constitute a service "through the Panama Canal," (4) if not, whether or such advantages to commerce as to justify extension beyond July 1, 1914, and (5) if service might be continued, whether the P. M. S. S. Co. should file schedules of Rates. The S. P. Co. lines extended from San Francisco to Galveston, Tex., and New Orleans, La., with steamship connections thence to New York and Havana, Cuba. It also owned the S. P. R. R. of Mexico, extending from Nogales, Ariz., on its main line to parts on the Pacific Coast of Mexico; and had a controlling interest in the P. M. S. S. Co., operating between San Francisco, and the Orient, and between San Francisco, the Mexican ports referred to and Balboa. It desired to extend the service to Colon. The route of the P. M. S. S. Co. formed the Pacific link in through transportation between New York and San Francisco via the Panama Canal; and both the S. P. Co. and P. M. S. S. Co. carried freight to and from San Francisco for and to European ports. HELD (1) that the P. M. S. S. Co. might compete for coastwise interstate traffic, traffic between the United States and Mexico and traffic between the United States and other foreign countries with the S. P. Co's rail lines from San Francisco; (2) that the Commission could not grant extension of time on vessels operating to Colon, since the service would

be "through the Panama Canal," but might on vessels operating to Balboa only, since such service would be in the public interest and of advantage to commerce, and its continuance would neither prevent nor reduce competition by the water route under consideration, and (3) that whenever extension was granted under section 5, the schedules of the water carrier must be filed equally with those of the controlling rail carrier. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690.

(u) The words "may compete for traffic" do not mean a vague, possible, though improbable, competition, but mean a probable, potential competition, as when the water line is entirely divorced from the railroad. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690. 694.

(v) Competition between S. S. Co. and S. P. Co. for coastwise traffic would be more or less potential if former were free from railroad influence. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 696.

(w) There is potential competition as to passenger traffic. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 697.

(x) Commission is without power to grant any extension of time as to vessels operating or to operate between San Francisco and Colon. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690.

(y) It has been suggested that the construction of the Panama Canal by the Government of the United States is indicative of a governmental policy to secure all of this coast-to-coast business for the water lines, and that no adjustment of rates by the rail lines should be permitted which will take away traffic from the ocean carriers which normally might be carried by them. This suggestion, however, loses force under the consideration that the Panama Canal is but one of the agencies of transportation that the Government of the United States has fostered between the Atlantic coast and the Pacific. The Government has from the beginning of railroad construction in the United States encouraged their construction and operation by private capital and enterprise. Some of these transcontinental lines would not have been built had it not been for the liberality the Government extended to them at the time of their construction. As we view it, the Panama Canal is to be one of the agencies of transportation between the east and the west, but not necessarily the sole carrier of the coast-to-coast business. If the railroads are able to make such rates from the Atlantic seaboard to the Pacific coast as will hold to their lines some portion of this traffic with profit to themselves, they should be permitted so to do. The acceptance of this traffic will add something to their net revenues, and to that extent decrease, and not increase the burden that must be borne by other traffic. It will also give the shippers at the coast points the benefits of an additional and a competitive service. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 621.

(z) In every case in which extension of time is granted under section 5 of the Act, the rates, schedules, and practices of the water carrier, governing traffic subject to the Act, must be subject to all of the provisions of the Act in the same manner and to the same extent as is the rail carrier controlling or interested in such water carrier. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 700.

(aa) The primary purposes of building the Panama Canal was to assist in the development and maintenance of an active, efficient and profitable water service between the two coasts. The rail carriers can not expect, and the Commission should not authorize, such a degree of relief as will secure to the rail lines the same percentage of the traffic to Pacific Coast terminals as they enjoyed prior to the opening of the canal. The proportion of freight hauled directly by the rail lines to the various destinations in back-haul territory should be greater than the proportion hauled to the terminals and should increase distance from the coast terminals increases. The rates to all the coast terminals points being practically the same, and the situations at intermediate points being substantially similar via all lines, the same method of constructing rates to intermediate points should be followed by all lines. When rates to the coast cities are lower than to intermediate points because of controlling water competition, every inland point should take rates higher than those to the port cities, either by arbitraries varying with distance from the nearest port city or by proportions of the

local rates from such ports to destinations. These rates should be fairly graded from the ports to the interior. Commodity Rates to Pacific Coast Terminals, 34 I. C. C., 13, 16, 17.

(bb) Petitioner, the B. R. & P. Ry. sought permission to continue its interest in and joint ownership of the Ontario Car Ferry Co., Ltd., of Canada. The latter was a Canadian corporation, half of whose stock belonged to petitioner; the other half to the G. T. Ry. of Canada. It owned a car ferry boat which plied between Genessee Dock. N. Y., and Cobourg, Ont., and connected with the rails of the two owning carriers. The boat transported coal to Cobourg for company use of the G. T. Ry., handled other carload freight, and during the summer months carried many tourist passengers bound for the resort regions of northern Ontario. Petitioner made joint through rates all rail via the Niagara gateway from Gennessee Dock to Cobourg. Passenger fares via the ferry line were the same as via competing boat lines, and freight rates were the same as via the all rail routes. The ferry line relieved congestion incident to the all-rail movement and provided a quicker transportation route. HELD, (1) that the participation of petitioner in through all-rail routes between the ports served by the ferry boat line in which it was interested made it possible for the petitioner to compete with such ferryboat line within the meaning of section 5 of the act as amended by the Panama Canal Act; (2) that the facts supported a finding that the existing service by water was being operated in the interest of the public and was of advantage to the convenience and commerce of the people, and that an extension of the petitioner's interest therein would neither exclude, prevent, nor reduce competition on the route by water under consideration. Operation of Ontario Car Ferry, 34 I. C. C., 52.

(cc) Petitioner sought leave to continue its interest in the Grand Trunk Milwaukee, Car Ferry Co., operating boats between Grand Haven, Mich., and Milwaukee, Wis. Petitioner, the ferry company, the G. T. Ry. of Canada, and the D. G. H. & M. Ry. had stockholders, directors and officers in common and were integral parts of the Grand Trunk Railway system. This system did not reach Milwaukee with its rails, but petitioner, and the D. G. H. & M. Ry. were parties to joint through rates via Chicago to points west of Lake Michigan. The all-rail route was, however, very indirect and traffic via it at times greatly congested. The same rates were charged via the car ferry. HELD (1) that the existence of joint through rates participated in by petitioner established a possibility of competition between its rails and the boats of the ferry company; but (2) that operation of the existing ferry service was in interest of the public and of advantage to the convenience and commerce of the people, and that extension of operation would neither exclude, prevent, nor reduce competition on the route by water. G. T. W. Ry. Operation of Car Ferry, 34 I. C. C. 55.

(dd) When Congress enacted the Panama Canal Act there was no single railroad company nor any system of railroad owning or operating rails reaching from the Atlantic Coast to the Pacific Coast, but the only transcontinental all-rail routes existed only under through route arrangements over which joint rates were made applicable, and, therefore, if it was not in the mind of congress that the existence of joint through route arrangements constituted such an all-rail line as brought about a condition of potential competition between a railroad participating in such through route arrangements and a boat line which it intended to operate through the Panama Canal, this part of the Act would be so many meaningless words and of no avail. G. T. W. Ry. Operation of Car Ferry, 34 I. C. C. 55, 56.

(ee) The S. P. Co. and the Associate Oil Co., its subsidiary, applied for leave to retain ownership in certain oil steamers operating between the California ports of Monterey, Gaviota, and Port Costa and points in Oregon, Washington, Alaska, and Hawaii. The oil company conveyed its oil by pipe lines from interior points to the loading ports, thence by its steamers to the destinations indicated. Interstate shipments were confined to the carriage of petitioners' oil. The loading ports were reached by the rails of the S. P. Co., and while its line extended no further north than Portland, Oreg., it reached via its connections the Washington destinations involved. HELD (1) that the S. P. Co. did or might compete with its oil steamers between California ports and points in Oregon and Washington, and continued ownership and operation of steamers between such

points was forbidden; (2) that unless the S. P. Co. participated, by its rail lines or connections, in transportation of oil from California points to a port for transshipment to Alaska, the continued ownership and operation of steamers between California and Alaska, carrying only oil for Alaska, was not, and would not, be in violation of the Panama Canal Act; (3) that the S. P. Co. did not compete with its steamers in their operation to Hawaii, and as to such service continued ownership and operation of the steamers was not contrary to the Panama Canal Act; (4) that if petitioners owned any pipe line which did or might compete with the boat line, such ownership and operation was within the provisions of the Panama Canal Act; (5) that the above holdings were not to be construed as a finding that the S. P. Co's. ownership in and transportation of its oil was not within the prohibition of the commodities clause. S. P. Co. Ownership of Oil. Steamers, 34 I. C. C., 77.

(ff) While the first part of section 1 of the Panama Canal Act, in describing carriers by water refers to "common carrier by water," it later prohibits rail ownership or interest in "any vessel carrying freight or passengers," rendering it unnecessary for the Commission, in passing on an application for leave to continue the operation of a boat line, to decide whether or not the boat line is a common carrier. S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77, 79.

(gg) A rail carrier does not necessarily have to reach a point in order to compete with water carriers that operate directly to that point, but that such competition may exist by the rail carrier's participation in joint rates. S. P. Ownership of Oil Steamers, 34 I. C. C. 77, 80.

(hh) One of the prime purposes of the Panama Canal Act was to prevent a railroad from owning and operating through the Panama Canal any water carrier with which it does or may compete. If Congress did not intend this provision to include such competition as does or may exist by the owning rail line participating in joint transcontinental rail rates with other carriers, this provision is meaningless, as no railroad or railway system in the United States operates its own line across the continent, and therefore there could be no competition between any rail carrier in the United States and steamers owned by it plying between Atlantic and Pacific ports via the Panama Canal. The purpose of this provision in the Act was to give shippers and owners of vessels the use of our newest avenue of commerce in free and open competition with the rail lines of the United States. Unless the Act mean that a carrier owning such a boat line and participating in joint transcontinental rates would be in competition with its steamers operating from Atlantic to Pacific ports through the canal, this part of the Act is of no effect. S. P. Ownership of Oil Steamers, 34 I. C. C. 77, 80.

(ii) By using its rail line to haul its own oil a carrier may compete with its oil steamers engaged in the same transportation, within the meaning of the Act. The Act says "does or may compete," and no provision is made with regard to the ownership of the commodity transported. S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77, 80.

(jj) The Panama Canal Act does not prohibit the ownership and operation of a water line or vessels by a corporation simply because it is an oil company. S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77, 80.

(kk) If a petitioner owns any common carrier pipe line which does or may compete with the operations of its boat line, such ownership and operation is within the provisions of the Panama Canal Act. S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77, 82.

(ll) Petitioner sought authority to continue its ownership and operation of car ferries across Lake Michigan from Frankfort, Mich., to Manistique, Menominee, Kewaunee and Manitowoc, on the west shore of Lake Superior. Petitioners rails extended from Toledo, Ohio to Frankfort. Of the freight moving via this water route 95 per cent was through traffic, in connection with north-western roads, from which petitioner would otherwise have been excluded. From 45 to 55 per cent of its traffic moved via these ferries. The boats also carried passengers, but no package freight except when loaded in cars. Petitioners participated in paralleling through all-rail routes via Chicago, but the water route furnished an expedited service. HELD (1) that the existence of such paralleling through all-rail routes made it possible for petitioner to compete with its boats within the meaning of the Act; but (2) that the

service by water was being operated in interest of public and was of advantage to convenience and commerce of people, and continuance thereof would not exclude, prevent nor reduce competition on the routes by water. Petition granted. A. A. R. R. Operation of Car Ferry Boats, 34 I. C. C. 83.

(mm) Petitioner sought leave to continue their interests in the several ferryboat lines operated in connection with their railroad systems. The P. M. R. R. extended from Buffalo, N. Y., into Ontario, where it branched, one line going to Chicago, Ill., and the other to Ludington, Mich. Where these respective branches were intersected by the Detroit and St. Clair rivers, at Windsor and Sarnia, Ont., it operated car-ferry boats to unite its rails; and it also operated ferryboats between Ludington and ports on the west shore of Lake Michigan. The B. & L. E. R. R. extended from Pittsburg, Pa., to Conneaut Harbor, Ohio, on Lake Erie and the two railroads were joint owners of the Marquette & Bessemer Dock & Nav. Co., operating a car-ferry boat between Conneaut and Port Stanley, Ont. HELD, (1) that it did not appear that the rail lines of the P. M. R. R. competed with its ferryboats on the Detroit and St. Clair rivers; (2) that the P. M. R. R. being a party to paralleling through all-rail routes between ports served by its Lake Michigan boats, and both railroads being parties to such routes between ports served by the Lake Erie boat, competition existed as to them within the meaning of the Act; but (3) that the specified services by water on Lake Michigan and Lake Erie were of advantage to the commerce and convenience of the people, and continuance thereof would not affect competition on the routes by water. Water lines directed to file tariffs. P. M. & B. & L. E. R. R. Cos. Operation of Car-Ferry Boats, 34 I. C. C. 86.

(nn) Petitioner sought permission to continue ownership and operation of the San Francisco & Portland S. S. Co., operating three steamers between Portland, Oreg., and San Francisco and San Pedro, Cal., Astoria, Oreg., being the only intermediate point served. No point served by the S. F. & P. S. S. Co. other than Portland was reached by petitioner's rails; but it participated in joint rates and fares with other carriers reaching San Francisco and San Pedro. The rates of the S. F. & P. S. S. Co. were lower than those via the rail lines, and it participated in joint transcontinental fares with practically all rail lines entering Portland, San Francisco, and San Pedro. Several independent water lines and boats operated between the three ports, while the S. F. & P. S. S. Co. competed with the P. Nav. Co. between San Francisco, and San Pedro. HELD, (1) that the O. W. R. R. & N. Co. did or might compete with the S. F. & P. S. S. Co. within the meaning of the Act, but (2) that the operation of the S. F. & P. S. S. Co. was in the interest of the public and of advantage to the commerce and convenience of the people, and continuance thereof would neither exclude, prevent, nor reduce competition on the route by water. Application granted, and the S. F. & P. S. S. Co. directed to file its rates, fares, schedules and regulations. O. W. R. & N. Co. Ownership of S. F. & P. S. S. Co. 34 I. C. C., 165.

(oo) A rail carrier by participating in joint through rates from or to a point not reached by its rails in fact serves that point, and may compete with its steamers operating direct to such point. O. W. R. & N. Co. Ownership of S. F. & P S. S. Co., 34 I. C. C., 165, 166.

(pp) Petitioners, the S. P. Co., and C. P. Ry., sought leave to continue the operation of a line of six steamers between Sacramento and San Francisco, Cal. The boats belonged to the C. P. Ry., a majority of whose stock was owned by the S. P. Co. The rails of the latter reached Sacramento, San Francisco, and two other points on the Sacramento River touched by the boats. Certain of the boats rendered a more expeditious freight service to San Francisco than the rail lines could render, while traffic of others was principally confined to a daily pick-up of deciduous fruits at points not touched by the rail lines. There were no restrictions as to outbound routing of shipments brought in by the boat line. Some 310 independent boats operated on the river. HELD that the S. P. Co. did compete with its boat line, but that the operation of such line was in the public interest, and that its continued operation by petitioner would not affect competition on the route by water. Petition granted, and filing of the rates, fares, schedules, and regulations of the boat line directed. S. P.

Co. Steamboats on Sacramento River, 34 I. C. C., 174.

(qq) Petitioner sought authority to continue its interest in the Lake Keuka Nav. Co., operating boats serving ports located on Lake Keuka in New York and connecting at Hammondsport with the B. & H. R. R., a subsidiary of petitioner. Neither petitioner nor any of its subsidiaries served any of the other ports, nor did petitioner join in through rates with carriers touching such ports. HELD that petitioner did not compete with the L. K. Nav. Co. within the meaning of the act. Erie R. R. Co. Operation of Lake Keuka Nav. Co., 34 I. C. C., 212.

(rr) The Erie R. R. and the C. & E. R. R. sought leave to continue their interest in and operation of certain tugboats, barges, and other equipment used on the Chicago River. The Erie R. R. owned the capital stock of the C. & E. R. R., which owned the water equipment, used by it to make delivery from its freight terminal at Chicago to industries located on the river. These industries were also served by tracks of certain belt-line roads with which the C. & E. R. R. maintained joint rates. HELD (1) That the interest of the Erie R. R. in the C. & E. R. R. was such as to render it a proper applicant under the act; (2) That the fact that petitioners were parties to through all-rail route arrangements between the points served by the water equipment made it possible for them to compete for traffic with such equipment; (3) That the service by water was operated in the public interest and that continuance thereof would not affect competition, on the route by water. Filing of tariffs of rates via the water Ownership of Water Equpiment, 34 I. C. C., 218.

(ss) The ownership of the capital stock of one railroad company by another renders the latter a proper and necessary applicant under the Panama Canal Act with respect to water equipment owned by its subsidiary. C. & E. R. R. Ownership of Water Equipment, 34 I. C. C. 218, 219.

(tt) Where railroads which do not reach with their own rails industries served by water equipment participate in tariffs publishing switching charges to such industries, it is possible for them to compete for traffic with such water equipment within the meaning of the Act. C. & E. R. R., Ownership of Water Equipment, 34 I. C. C., 218, 219.

(uu) Petitioners, the D. S. S. & A. Ry., the G. R. & I. Ry., and the M. C. R. R., sought permission to continue their joint interest in and operation of the Mackinac Transp. Co., owning two car ferryboats, plying between St. Ignace and Mackinaw City, Mich. None of the rail carriers reached both ports; and while each of them was a party to through all-rail routes via Chicago, by which it was possible for them to compete with their boats, such routes were circuitous and the probability of actual competition remote. HELD that the existing service by water was being operated in the public interest and convenience and did not adversely affect competition on the route by water. D. S. S. & A. Ry. Etc., Operation of Mackinac Transp. Co., 34 I. C. C., 229.

(vv) Certain carriers reaching Chicago, Ill., sought to eliminate the Merchants Lighterage Co. and the Chicago Warehouse & Terminal Co. from the benfits of the Lowery tariff, which provided for the application of Chicago rates to and from industries and stations within the Chicago switching district, whether or not the same was located on or directly connected with the carrier performing the line haul. THE TUNNEL COMPANY: Operated 60 miles of narrow-gauge electric railroad in tunnels underneath the business center of Chicago. The tracks of 2-ft. guage, preventing interchange of equipment, connected by elevators with the stations of various railroads, commercial houses or industries, and certain "universal" stations The railway was equipped with 132 electric motors and 2402 merchandise cars and handled 609,320 tons of merchandise per annum. It received compensation out of the through rate, 6c per 100 lbs., on all freight passing through its universal stations; at other stations 4c per 100 lbs., on shipments exceeding certain minimums. THE LIGHTERAGE COMPANY. Operating two boats on the Chicago River, maintained universal stations and also served certain industries at private docks. It handled 134,482 tons of freight per annum, but a small part of which was for the shareholders of the company. Substantially the same provisions existed as to division of rates as in case of the tunnel company. HELD that respondents had failed to justify

the proposed cancellations, and that the existing arrangements with the tunnel company and the lighterage company should be continued. Cancellation of such rates would result in unjust discrimination against the two companies, and shippers and consignees located on their lines. Cancellation of Suspended Schedules directed. Rates in Chicago Switching District, 34 I. C. C., 234.

PAPER RATES

See Advanced Rates, §5 (7½); Evidence, §42¼; Reasonableness of Rates, §24.

PARCEL POST

See Express Companies, §21 (I).

PARTICIPATION IN THRU TRAFFIC

See Advanced Rates, §17 (d); Alaska, (a); Interstate Commerce, §3; Through Routes and Joint Rates, §3½, §21½.

PARTIES

See Procedure Before Commission, V; Loss and Damage, §17; Reparation, §6; §19; Routing and Misrouting, §10.

PASSENGER FARES AND FACILITIES.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. REASONABLENESS.
§2. In general.
§3. Basing fares.
§4. Certificate plan.
§5. Commutation fares.
§5½. Excess fares.
§6. Mileage and excursion rates.
§7. Party rates.
§7½. Round-trip tickets.
§8. Validation.
III. DISCRIMINATION IN FACILITIES.
§9. Regulations in general.
§10. Baggage.
§11. Colored passengers.
§12. Free transportation.
§13. Stations.
§13½. Stopovers.
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IV. CLAIMS FOR DAMAGES.
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§16. Lost tickets.
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§17. In general.

CROSS REFERENCES

See Accounting, §6 (c), (g); Advanced Rates, §2½ (l); Basing Points and Lines, §1 (bb); Discrimination, §1 (jj); Electric Lines; Evidence, §18 (r); Interstate Commerce, §½ (b); Reasonableness of Rates, §7½ (p); Reparation, §8 (e); Special Trains.

I. CONTROL AND REGULATION.

See Control and Regulation.

§½. In General.

(a) In the provision of section 1, as amended by the Hepburn Act, that "no common carrier subject to the provisions of this Act shall issue or give any interstate free ticket, free pass," etc., the phrase "common carrier" is not limited to "common carriers subject to the provisions of this act," and hence a common carrier subject to the Act may exchange passes with ocean steamship lines and foreign railroads. U. S. v. E. R. R. Co., 213 Fed. 391.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) Transportation of a passenger from a point in a state to a point in an adjoining state is "interstate transportation" and governed by the Interstate Commerce Act. Ligon v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 647.

(b) The Commission cannot be controlled in its judgment upon the reasonableness of interstate rates and fares by the independent action of a state legislature or a tribunal not federal. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 355.

II. REASONABLENESS.

§2. In General.

(a) Maintenance of special fares from Pittsburgh in one direction, while like fares are denied to points west of Pittsburgh, not unjust discrimination. Carnegie Board of Trade v. P. Co., 28 I. C. C. 122, 126.

(b) An attempt to avoid through rates by paying ticket rate to an intermediate

point, and the mileage rate beyond, must be accompanied with the conditions of the tariffs under which mileage is sold. In re Mileage Books, 28 I. C. C. 318, 322.

(c) Through fares from Helena, Mont., to Los Angeles, Cal., found unreasonable in so far as they exceed the aggregate of intermediate fares. Reparation awarded. Board of R. R. Com'rs of Mont. v. G. N. Ry. Co., Unrep. Op. A124.

(d) Fares charged for naval recruits between Norfolk, Va., and Charleston, and Port Royal, S. C., and Savannah, Ga., found to have been unreasonable to the extent that they exceeded the combination of intermediate passenger fares contemporaneously in effect. Reparation awarded. U. S. v. A. C. L. R. R. Co., Unrep. Op. A-175.

(e) A rate or fare that is merely nonconfiscatory may fall short of one which is entirely just and reasonable. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 355.

(f) The fact that a certain passenger rate scale has not been shown to have been confiscatory in one of the states traversed is only one fact bearing on the justice and reasonableness of a higher rate charged on an interstate journey. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 355.

(g) A holding by the Supreme Court of the United States that a maximum passenger fare of 2c per mile on interstate journeys prescribed by state law is not confiscatory has not the effect of establishing a fare of 2c per mile as the maximum lawful fare on an interstate journey on the stretch thereof which lies within such state. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 354.

(h) That interstate passenger fares are higher on one road than fares charged by other carriers in the same general territory and higher than intrastate fares fixed under authority of state laws and not voluntarily accepted by the carrier are not sufficient facts to justify an order reducing such fares when the carrier making such charge is operating through a mountainous and sparsely settled country and is earning less than its taxes and cost of operation. Railroad Com. of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491.

(i) Complainant, the Railroad Commission of Arkansas, attacked the interstate passenger fare of 80c charged by the E. S. Ry. Co. between Seligman, Mo., and Beaver, Ark., a distance of 12.37 miles. The M. & N. A. R. R. Co. operates a railroad 365 miles long between Joplin, Mo., and Helena, Ark. The volume of business of this company is increasing, but part of its road is over mountainous country, where grades are steep and curves sharp, and cost of operation is high and leaves little net earnings. In 1912-13 the gross earnings were $1,236,144; expenses, $1,200,129; net earnings, $36,015. During 1913 the road suffered a deficit of $93,147, excluding interest and discount on receivers' certificates. During the corporate life of defendant the total deficit was $468,530. The total number of revenue passengers was 447,561, and passenger revenue $369,528. The interstate fare in Missouri and Arkansas is 2c a mile; and as to that portion of the M. & N. A. other than between Seligman and Beaver, the interstate fare is 3c. On the St. L. & S. W. the average wage of enginemen is $4.60; all other laborers, $1.75; and expense of all employes assigned to transportation, $2.61. On the M. & N. A. expenses of enginemen are $4.62; all other laborers, $2.90; and transportation, $2.70. While the grades and curves on other parts of the line are steep and sharp, they are less so than from Seligman to Beaver. In 1913 there were but 61,272 passengers handled over this portion of defendants' line; revenue therefrom $118,537. Those who pay this higher rate travel an average distance of 60 miles, so that much of the revenue received from the alleged excessive charge is distributed over a greater distance than 12.37 miles. HELD, that the facts relating to transportation conditions and difficulties, in view of the deficit in the revenues of the E. S. Ry., justify a continuation of existing fares. Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488.

(j) Under section 2 prohibiting unjust discriminations, and section 3 prohibiting undue preferences, a passenger has no right to be transported over a longer route between two points at the tariff rate applicable to a shorter route. If he travel by the longer route, he must pay the fare applicable thereto and at the time chargeable to all persons traveling by that route, and if he refuse to do so, it is not only the right but the

duty of the conductor to refuse to carry him. Ligon v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 647, 649.

(k) There is no provision of law under which the Commission would be justified in increasing freight rates to provide a return upon property used exclusively in the passenger service, much less to take care of losses incurred in such service. The Five Per Cent Rate Case, 31 I. C. C. 351, 392.

(l) Failure to advance passenger fares at the same time is no persuasive reason for declining permission to increase freight rates to a level that is just and reasonable. Peculiar difficulties center around the advance of passenger fares, and, while they eventually ought to bear their proper share of transportation expenses, their elevation under existing circumstances must in point of time inevitably follow comprehensive adjustment of freight rates. The Five Per Cent Rate Case, 31 I. C. C. 351, 436. (Dissenting Opinion.)

(m) A rate or fare that is merely nonconfiscatory may fall short of one which is entirely just and reasonable. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 355.

(n) Particular districts are to be dealt with by carriers when they come to set new fares in the light of the peculiar modifying conditions, and a rule of thumb method of fare fixing must be used with circumspection. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 435.

(o) The principle of estoppel we do not understand to be part of the law as to reasonable fares. The Interstate Commerce Commission can not substitute for a just and reasonable rate, a lower rate on the ground that the railroad was by its former conduct estopped from charging a reasonable rate. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 436.

(p) Fare of 40c from Little Hocking, Ohio, to Parkersburg, W. Va., not found unreasonable. Lower fares from Marietta, Ohio, said to be in the nature of commutation fares. Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op. A-798.

(q) Where a carrier had three routes in effect between two points in different cities and the passenger fare over the longer route was $7.75, while the rate over the short route was $6.75, and a passenger paid $7.75 and was given a ticket calling for transportation over the shorter route but took a train over the longer route, the conductor had no right to eject him, and if he did, the carrier was liable for punitive damages, in spite of the fact that the tariffs were on file with the Interstate Commerce Commission. Jordan v. S. Ry. Co., (S. C. 1915), 84 S. E., 871.

§3. Basing Fares.

See Basing Points and Lines.

§3 (1). Combination on State Fares.

(a) Complainant attacked the passenger fares of $11.50 from Clinton, Ia., to Henning, Minn., and $5.64 from Wadena, Minn., to Hudson, Wis., as unreasonable and unjust to the extent that they exceeded the aggregates of passenger fares established by law within the state of Minnesota, between St. Paul and Henning and between Wadena and St. Paul, and the interstate charges between Clinton and St. Paul and between St. Paul and Hudson, and asked reparation. By Minnesota law the maximum fare for adults over the N. P. Ry. between points wholly within the state has been 2c per mile since May 1, 1907. In Minnesota Rate Cases, 230 U. S., 352, June 9, 1913, the U. S. Supreme Court held this rate scale was not confiscatory, but prior thereto the carrier had not conformed its passenger fares to the scale required by the state statue, either for local or interstate transportation. Nov. 15, 1912, complainant bought a through ticket from Clinton, Ia., to Henning, Minn., paying the published joint fare of $11.50, which ticket was for transportation via the C. B. & Q. R. R. to St. Paul, and thence over the N. P. Ry. to destination. Tariffs on file with the Commission fixed the fare from Clinton to St. Paul at $6.28 and from St. Paul to Henning at $5.19, the joint fare paid thus exceeding the sum of intermediate fares by 3c. Nov. 17, 1912, complainant purchased a through ticket from Wadena, Minn., to Hudson, Wis., for $5.64, via the N. P. Ry. from Wadena, Minn., to St. Paul, Minn., and thence via the C. St. P. M. & O. Ry. to destination. Tariffs on file with the Commission applicable to interstate transportation fixed the fare from Wadena to St. Paul at $4.74, and from St. Paul to Hudson at 60c, the through fare paid thus exceeding the sum of the intermediate fares by 30c.

At that time under Minnesota law the legal fare of the N. P. Ry. from St. Paul to Henning was $3.56 and the legal fare via the same carrier from Wadena to Henning was $3.18. HELD, that the nonconfiscatory character of scales of fare established by a state for intrastate passenger journeys, where such rate scales have not been acquiesced in by the carriers, is not sufficient per se to warrant setting aside as unjust and unreasonable fares at a different level for interstate journeys, even where one stretch of the interstate journey is entirely within the state establishing such scale of rates. The fares charged were, however, unlawful to the extent that they exceeded the aggregate of intermediate fares subject to the provisions of the Act. Reparation awarded. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352.

(b) Fares established by the laws of a state do not become subject to the provisions of the Interstate Commerce Act until they have been adopted as their own and as applicable to interstate commerce by the carriers, and until filed with the Commission as applicable to interstate commerce, in accordance with section 6, or until such fares have been lawfully imposed on the carriers as applicable to interstate commerce and duly filed with the Commission. Otherwise each state could by legislative enactment at once vary the charges applicable to interstate commerce without notice to the Commission and thus nullify section 6. The Commission, while it should give due weight to the determinations of state legislatures and commissions, cannot be controlled in its judgment upon the reasonableness of interstate rates and fares by the independent action of a state legislature or tribunal. Trier v. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 354.

(c) Complainant attacked the interstate passenger fare of 3c a mile through Arkansas, Missouri and Oklahoma as unreasonable and discriminatory to the extent that it exceeded the intrastate fare of 2c maintained in those states. By a 3c rate was meant that 3c was charged for the shortest mileage between two points, but all carriers between those points must meet the rate of the short line. Thus from Kansas City, Mo., to Oklahoma City, via the M. K. & T. and the C. R. I. & P. Rys., respectively, for distances of 343 and 408 miles, the 3c fare was $8.55, rate per mile 2.463c and 2.095c, and the 2c fare would have been $6.95, rate per mile 2.026c and 1.703c. In 1914 the M. K. & T. Ry. suffered a decrease of $24,855.83 in intrastate passenger revenue, due to reduction of the intrastate rate from 3c to 2c, and a composite statement of seven carriers showed that for a period of ten years the income had been from 3.94 per cent to 5.85 per cent of the book value of their property, and that if the 2c rate had been applied to interstate travel in 1913 the decrease in passenger revenue would have been $5,174,341.73. Density of passenger traffic was comparatively low in this territory, being 85,076 passengers per mile of line for the state of Oklahoma, as compared with 251,075, 92,839 and 102,555 in the eastern, southern and western territories, respectively. HELD, (1) that defendants did not voluntarily establish nor maintain the intrastate passenger fare of 2c per mile, and hence it was not fairly comparable in determining what was a reasonable interstate rate; (2) that an interstate passenger fare of 3c in the states named was not unreasonable, and (3) that the 3c fares not being unreasonable, the complaint be dismissed. Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532.

§5. Commutation Fares.

See Commutation Fares.

(a) Complainant assailed the one-way, round-trip and commutation fares charged by defendant for the transportation of passengers between its Washington, D. C., terminal and Addison and Virginia Highlands stations on its Mount Vernon division in Virginia. These points have a combined population of 350 to 400 persons, a considerable proportion of whom travel the route daily. The Mount Vernon division is composed of six fare zones, in the first of which the fare each way is 5c, or six fares for 25c. Addison and Virginia Highlands are in the second zone, which begins 2.40 miles from the Washington terminal and ends at 5.61 miles, the distance to Addison being 3.37 miles and to Virginia Highlands 3.62 miles. The fare one way is 10c, round trip 15c, while a 25-trip commutation ticket is sold for $1.80, equivalent to 7.2c for a one-way trip. To Alexandria and New Alexandria, distant 7.91 and 7.92 miles, respectively, the one-way fare is 15c, the round trip fare 25c, and 25-trip commutation tickets $2.50 and $3.00, respectively, while 52-trip monthly tickets

are sold for $4.05, equivalent to less than 8c for a one-way fare. The latter class of tickets are not sold for travel between Washington and Addison and Virginia Highlands. At no other points on the division are the round-trip and commutation fares so nearly equal. Though these points are at less than half the distances to Alexandria and New Alexandria the minimum cost of one-way transportation is but a fraction of a cent less, while commutation fares from Alexandria to these points are considerably lower than fares for the shorter distances thence to Washington. HELD, that defendant's commutation fares between its Washington terminal and Addison and Virginia Highlands, when compared with its commutation fares to other points on the Mount Vernon division, result in undue discrimination against Addison and Virginia Highlands in favor of such other points. Defendant should provide a 52-trip monthly ticket between Washington and Addison and Virginia Highlands, to be sold for not exceeding $3. The regular one-way and round-trip fares between such points are not unreasonable. Virginia Highlands Citizens Assn. v. W.-V. Ry. Co., 30 I. C. C. 593.

(b) Commutation fares between Washington and Addison and Virginia Highlands, Va., found to result in undue discrimination as compared with other points on same division. Virginia Highlands Citizens Assn. v. Washington-Virginia Ry. Co., 30 I. C. C. 593, 596.

(c) In fixing reasonable fares for commutation traffic elements other than cost which determine reasonableness must not be glossed over. Value of the service to the habitual traveler, if often vaguely conceived, is none the less a real factor; and fares tending to put the use of the railroads beyond the reach of the average commuter of a particular region or which might tend to compel on a large scale changes of residence, or which tend to disrupt the community life of those dependent upon this service, must be viewed in the light of the carrier's obligation as a common carrier designed for community service. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 435.

(d) Commutation traffic is sometimes a by-product, a sort of pick-up traffic, incidental to other traffic which is productive of greater remuneration; a traffic which adds slightly to the income, and which were it not present would permit but little decrease in expense. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 434.

(e) The nature of commutation traffic must be considered. Passenger traffic is generally recognized as being dependent upon factors different from those controlling freight; and its fares are constructed upon bases dissimilar from those of freight rates. However, just as commodities of low grade take rates lower than other commodities, though the cost of carrying may often be the same, commutation traffic frequently takes lower fares than passenger traffic generally, and on the same supplemental principle, and not altogether because of the sale of transportation in quantity. It has not been held by the carriers to the same degree of per unit remunerativeness and probably can not be. This does not imply, however, that the carriers are to carry at an actual loss or without some margin of profit. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 434.

(f) The Commission considered the proposal of the B. & O. R. R. relative to commutation fares in and out of Washington, D. C., from and to Baltimore, Md., on the Washington branch and Washington Junction on the Metropolitan branch. It was proposed to advance the price of the 60-trip monthly and the 10-trip tickets and to withdraw the 180-trip quarterly and the 24 and 50 trip tickets. The main controversy was over the proposed increased fare on 60-trip tickets and the withdrawal of the 180-trip ticket. The former was but little used as compared with the latter. The following table shows the increases which would result from the proposed changes:

	Miles from Washington	Present 180-trip fare per month	Proposed 60-trip fare per month	Increase per month comparing present 180 with proposed 60 trip ticket	Percentage of increase
Stott	5.1	$ 2.62	$ 4.60	$1.98	76
Halpine	15.1	5.19	7.60	2.41	46
Waring	25.3	7.45	10.60	3.15	43
Tuscarora	39.6	10.80	14.95	4.15	38

Per trip and per mile changes for the corresponding points would be as follows:

Miles from Washington		Present 180-trip		Present 60-trip monthly		Proposed 60-trip monthly	
		Per trip	Per mile	Per trip	Per mile	Per trip	Per mile
Stott	5.1	$0.0435	$0.0085	$0.0666	$0.013	$0.0766	$0.015
Halpine	15.1	.0864	.0057	.115	.0076	.1266	.0084
Waring	25.3	.1241	.0049	.1725	.0068	.1766	.007
Tuscarora	39.6	.18	.0045	.24	.0061	.2491	.0063

On commuter trains and on regular hourly trains from Baltimore the passenger revenue per train-mile was 52 and 73.3c respectively; average expenses per passenger per mile 1.511 and 1.1c. On commuter trains the operating expenses were $232,988, earnings $160,325; on hourly trains $136,863 and $129,092 respectively. But on the Metropolitan branch the revenue exceeded the expenses in about an equal degree. The Pa. R. R. charged $5.65, $7.60, and $9.50 for 60-trip monthly tickets from New York, N. Y., to Newark, Rahway, and Stelton, respectively, for distances of 10.1, 20.8, and 30.3 miles; and the S. R. R., charged $5.40, $8.70, and $12.60 for tickets from Washington to Seminary, Burke, and Manassas, distant 10, 21, and 34 miles. HELD, that withdrawal of the 24, 50, and 180 trip tickets were justified, as well as the increased price of the 10-trip tickets; but that the proposed increased price of 60-trip tickets was not justified. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428.

(g) Where it is proposed to increase commutation fares the burden of proving the increased fares reasonable is upon respondent; and in seeking increased revenue and uniformity of tariffs, it must work no injustice to the traveler. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 437.

(h) The fundamental matter for determination is what is a reasonable price for the commuter to pay who travels every day; whether the tieket upon which he travels be for one month or for three months neither alters the value of the service to the commuter nor the cost to the carrier. Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 437.

(i) In a proceeding by the holder of a 50-trip family ticket for the ejection of his son-in-law while attempting to use such ticket, on the ground that he is a member of complainant's immediate family, the fact that defendant had carried such son-in-law on a similar ticket held by complainant during the previous year is entirely irrelevant. One violation of the Act affords no basis for a subsequent similar violation. Gage v. Erie R. R., 33 I. C. C. 593, 594.

(j) Complainant purchased from the Erie R., a so-called 50-trip family ticket from Ridgewood, N. J. to New York. The ticket tariff provided: "This class of ticket under conditions of its contract is valid for passage for one year from date of passage, except where otherwise noted, and good only for transportation of the person whose name appears thereon and members of his immediate family and servants therein. The expression 'immediate family' applies to those not living with, but entirely dependent upon, the person whose name appear on face of ticket." HELD, the tariff did not include a son-in-law, who lived with, but was not dependent upon complainant. Gage v. Erie R. R. Co., 33 I. C. C. 593.

(k) The I. C. R. R. and Y. & M. V. R. R., proposed to cancel certain commutation fares between points on their lines. Between points not over 75 miles apart in Alabama, Kentucky, Louisiana, Mississippi, and Tennessee. except New Orleans, La., 30 ride family tickets were sold for 20 times the first class fare, minimum $3.00. Ten-ride family tickets, between New Orleans and certain other points on defendants' lines, were sold at rates varying from 2 to 2 1-2c per mile. It appeared that these tickets were not used in appreciable numbers by commuters for interstate trips. HELD that cancellation of the fares in question had been justified. Order of suspension vacated. Southern Commutation Fares, 35 I. C. C. 36.

§5¼. Compartments and Drawing-Rooms.

(a) Following hearings in Montreal on Jan. 23 and 24, 1911, orders went ap-

proving the basis of maximum sleeping and parlor car tolls on the lines of railway subject to the Canadian Board's jurisdiction. These orders made provision for publication of the tariffs so approved in at least two consecutive weekly issues of the Canadian Gazette. These tariffs, therefore, covered the maximum rates legally applicable on lines subject to the Board's jurisdiction. To take the Grand Trunk tariff C. R. C. E-1989 as typical, the provision contained as to drawing-room and compartment car fares is as follows: "Drawing-rooms in Standard Sleeping Cars.—Three and one-half (3½) times charge for lower berths, sufficient being added to make the charge end in a miultiple of one dollar ($1.00). Minimum charge six dollars ($6.00). Compartments in Standard Sleeping Cars.—Two and four-fifths times charge for lower berths, sufficient being added to make the charge end in a multiple of fifty cents ($0.50). Minimum charge, five dollars ($5.00). Drawing-room in Parlor Cars or for Day Runs in Standard Sleeping Cars.—Six (6) times charge for seats, not exceeding charge for drawing-room for night service between same points. Compartments on Day Runs of Standard Sleeping Cars.—Four (4) times charge for seats, not exceeding charge for compartment in night service between same points." This accommodation was available on the payment of the above fares to the holder of one passenger ticket. In February, 1914, tariffs were filed by the railways providing for additional passenger fares in case of exclusive occupancy of a compartment or a drawing-room. The following excerpt from Grand Trunk Tariff C. R. C. E-1989 is typical of the arrangement: "A minimum of one and one-half adult passage tickets (including one and one-half extra fare tickets on extra fare trains between points where extra fares apply) will be required for the exclusive occupancy of a compartment and two adult passage tickets (including two extra fare tickets in extra fare trains between points where extra fares apply) for the exclusive occupancy of a drawing-room, in addition to proper sleeping and parlor car tickets." Following this the Board by its Order 21413 of Feb. 27, 1914, suspended as to their operation between points, both of which were in Canada, the tariffs of certain railways subject to its jurisdiction, the names of these railways being set out in the order in question. The matter was heard on the 17th of March. The position put forward by the railways at the hearing was in substance that there was not an adequate payment being made for the use of the compartment, or of the drawing-room. It was further stated that under existing arrangements an individual could, on payment of the appropriate compartment or drawing-room fare, have the use of this exclusive accommodation on one passenger ticket, and it was stated that this worked detrimentally in that on occasion two individuals might desire to have the accommodation in question, but would be prevented from doing so on account of its already being purchased by one traveler. The effect of this from the railway's standpoint was that where two passenger tickets might have been sold in connection with the accommodation in question only one had been sold. From what was said such an occurrence must be relatively infrequent. In the course of the investigation which ended in January, 1911, it was testified that only about 5½ per cent of the total passenger traffic of the Canadian Pacific was carried in sleeping cars. It was stated by Mr. Flintoft, for the C. P. R. at the present hearing, that about 3 per cent of the sleeping car traffic was represented by the case where an individual has the exclusive occupancy of the drawing-room. These are mere averages, of course, and cannot be taken as being necessarily final. It would, however, appear on these computations that the grievance complained of was concerned with only a small fraction of 1 per cent of the total passenger traffic. HELD, it does not appear that the hypothetical two individuals who would use the accommodation, if it were not already occupied exclusively by one person, will, on this account, abstain from traveling; and if they do not abstain from traveling the railway will be in the same position as to passenger fares. Whether two passenger fares are received in connection with the use of a section and one for a drawing-room, or vice versa, will not affect the passenger returns of the railways, since in either case three passenger tickets are purchased. There was not at the hearing an application by the railways to raise the standard Pullman rates. There was in effect an application to increase the passenger rate under certain conditions. The case for the increase of the passenger rate has not been made out, and the order of

suspension above referred to should be replaced by an order disallowing the tariffs within the scope set out by the order. As has been indicated, it is contended that at times an individual may have the exclusive occupancy of a drawing-room or of a compartment when two individuals desire this accommodation. It, no doubt, would be a convenience under such circumstances for the two individuals in question to have the first chance of purchasing the accommodation. If the railways desire to cover this situation it would seem that a rule could be drafted providing that compartment or drawing-room accommodation will not be sold to an individual for his exclusive occupancy until either within a certain time before the train leaves, or after the train is in motion. And in this way the question of the convenience of the two individuals so often referred to during the hearing could be adequately provided for. Re Increased Charges for Exclusive Occupancy of Drawing-room and Compartments (Can. Ry. Com.), File 9451, Part 2.

(b) Complainant attacked defendants' passenger-fare rule under which a minimum of one and one-half first-class tickets was required for the exclusive use of a compartment on "California limited" trains, as unreasonable. This rule was generally applied by carriers west of Chicago, in connection with transcontinental first-class sleeping-car service. HELD, that the rule complained of was not shown to be unreasonable. Complaint dismissed. Mosely v. A. T. & S. F. Ry., 33 I. C. C. 521.

§5½. Excess Fares.

(a) An excess of $3 over the regular fare for passenger transportation between Chicago and New York City on fast trains not found to be unreasonable or unjustly discriminatory. Harrington v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A-227.

§6. Mileage and Excursion Rates.

See Distance Rates.

(a) Special fares for movement of passengers in guaranteed numbers in one day, without baggage-checking privileges, may be provided by carriers under Section 22, but in absence of discrimination, Commission has no power to prescribe. Carnegie Board of Trade v. P. Co., 28 I. C. C. 122.

(b) Movement of passengers in guaranteed numbers upon special trains are excursions to which carriers may give, but to which Commission has no power to compel them to give, a different fare per passenger from reasonable fare charged for transportation of single passengers upon regular trains. Carnegie Board of Trade v. P. Co., 28 I. C. C. 122, 129.

(c) Fares for ordinary movement of passengers are not properly to be compared with fares provided for excursion parties in view of the substantially different conditions attached. Carnegie Board of Trade v. P. Co., 28 I. C. C. 122, 129.

(d) Commission has no power to compel carriers to make excursion rates. Carnegie Board of Trade v. P. Co., 28 I. C. C. 122, 128.

(e) The Commission has no power to require carriers to receive interchangeable mileage coupons upon trains wholly within a state, nor that mileage sold, by its terms good only for transportation wholly within a state, shall be receivable for interstate journeys. In re Mileage Books, 28 I. C. C. 318, 321.

(f) If it were not for the provisions of Section 22, it is debatable whether any concession from the regular fare would be lawful. In re Mileage Books, 28 I. C. C. 318, 323.

(g) Regulation requiring exchange of coupons from interchangeable mileage books for mileage exchange tickets before commencing journey not found discriminatory or otherwise in violation of Act. In re Mileage Books, 28 I. C. C. 318.

(h) While the issuance of mileage by carriers may be voluntary, conditions attached to the use thereof must not make discriminations or other positive wrongs forbidden by the Act. In re Mileage Books, 28 I. C. C. 318.

(i) The holders of mileage books gain an advantage over other passengers so far as rates are concerned, and are not at a disadvantage otherwise. In re Mileage Books, 28 I. C. C. 318, 323.

(j) The Commission is not able to agree that the acceptance of state mileage upon trains and the contemporaneous requirement that interstate mileage must be exchanged for tickets constitute a discrimination against interstate travelers. In re Mileage Books, 28 I. C. C. 318, 324.

(k) Whether or not the principle of

"wholesale transportation" involved in the issuing and use of mileage books, as permitted by Act of Congress, should be further extended in the matter of transportation, is a question of policy with which the Commission has nothing to do. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 156.

(l) In permitting the continued sale and use of mileage books for passenger transportation, Congress has to some extent recognized the principle involved therein, sometimes referred to as the "wholesale theory" of transportation; but such books, if issued, must be free from discriminatory classifications and must be open to all who can avail themselves of their use. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 156.

§7½. Round Trip Tickets.

(a) One, Maxwell, after repeated interviews and correspondence with the representatives of the Louisville & Nashville Railroad Company in regard to rates on round trip tickets to Salt Lake City, purchased on or about the 1st day of June, 1910, "two passenger tickets from Nashville, Tennessee, to Salt Lake City, by way of Chicago, Illinois, Denver, Colorado, and routed to return by Denver, Colorado, Amarillo and Fort Worth, Texas, and Memphis, Tennessee, and paid for each ticket the sum of $49.50. There were at the time, published rates under the provision of the interstate commerce act by which fares over the route actually traveled, going and coming, aggregating $76.65 each, or $29.15 each more than was charged and collected therefor, making a difference of $58.30 between the amount paid by Mr. Maxwell for the tickets in question, and the amount collected. HELD, that the carrier could recover the undercharge from the passenger to make up the lawful rate applicable over the route actually traveled. L. & N. R. R. Co. v. Maxwell, 35 Sup. Ct., 494, 495; 237 U. S. 94, 59 L. ed.

§7¾. Special Trains.

(a) Passenger purchased regular ticket, intending to use the same in interstate transportation. His employer, without his knowledge or request, chartered special train for a part of his transportation wholly within one state, which he used. HELD, that when passenger left the regular train and boarded the special train, his contract with the carrier terminated, and therefore the special train service cannot be considered part of an interstate transportation, and the Commission is without jurisdiction to determine the reasonableness of the charge exacted therefor. Wait Talcott v. Southern Pacific Co., 33 I. C. C., 292, 293.

III. DISCRIMINATION IN FACILITIES.

See Discrimination.

§9. Regulations in General.

(a) Section 2 of the Interstate Commerce Act, prohibiting unjust discriminations by carriers, and section 3 prohibiting undue preferences, relates to passenger as well as to freight transportation. Ligon v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 647, 649.

§10. Baggage.

See Loss and Damage, §2 (j), §6 (n).

(a) Where regulations limiting baggage liability unless a greater value than $100 is declared and paid for, are filed and published, the passenger may (1) declare the value, pay the excess rate and thus secure the liability of the carrier to the full amount of the value of the baggage, or (2) value it at $100, and receive free transportation for it and liability to that extent only, or (3) make no valuation, in which event the rate and the corresponding liability automatically attaches. B. & M. R. R. Co. v. Hooker, 34 Sup. Ct. 526, 529; 233 U. S. 97; 58 L. ed. —.

(b) The requirement of the Carmack amendment, that a railroad corporation receiving property for transportation in interstate commerce shall issue a receipt or bill of lading therefor, does not require, in the case of baggage, other receipts than baggage checks. Such checks are receipts, and there is no special requirement in the statute as to their form, though the Commission is authorized to make requirements as to the checks or receipts to be given for baggage if that subject needs regulation. B. & M. R. R. Co. v. Hooker, 34 Sup. Ct. 526, 532; 233 U. S. 97; 58 L. ed. —.

(c) A limitation by a carrier as to its baggage liability is determinative of the rate to be charged and affects the service to be renderd the passenger, within section 6 of the Act, as amended by the Act of June 29, 1906, requiring that such

regulations be filed with the Commission as a part of the carrier's tariffs. B. & M. R. R. Co. v. Hooker, 34 Sup. Ct. 526, 531; 233 U. S. 97; 58 L. ed. —.

(d) The schedules of fares and charges and baggage regulations filed by the carrier with the Commission fixing the limit of liability for loss of baggage bind the carrier and passenger in interstate transportation. Ford v. C. R. I. & P. Ry. Co. (Minn. 1913), 143 N. W. 249.

(e) Plaintiff purchased a ticket from Colby, Kan., to Albert Lea, Minn., and received a baggage check which bore on its reverse side a clause purporting to limit liability on baggage to $100. Defendant company had at the time on file with the Commission schedules of passenger fares and charges, and baggage regulations, which stated that 150 lbs. of baggage not exceeding in value $100 would be checked free, and which also provided that unless the passenger declared for a greater sum and paid an excess baggage rate, the value should be deemed and agreed to be not in excess of $100. Plaintiff was not informed of the regulations, nor was his attention directed to the limitation on the reverse of the baggage check, nor was the question of value mentioned. His baggage was lost in transit. On a trial for loss of the baggage a verdict for $175 was rendered for him. HELD, that the provisions relative to liability as to baggage and charges for excess baggage bound the carrier and passenger in the same way as the schedules of freight tariffs find carrier and shipper, and that there was a valid limitation of liability for loss of plaintiff's baggage and he was entitled to recover but $100. Ford v. C. R. I. & P. Ry. Co. (Minn. 1913), 143 N. W. 249.

(f) To fix passenger rates and provide for the carrying of a maximum amount of baggage as a part of the fare is but an exercise of the right of the carrier to fix the rate for carrying the baggage, and, that being true, it follows that the carrier can, with the consent of the Commission, charge for baggage in excess of the maximum weight. L. & N. Ry. Co. v. Miller (Ky. 1914), 162 S. W. 73, 75.

(g) Personal baggage is "property" with Section 20 of the Interstate Commerce Act as amended by the Carmack Amendment, providing that any carrier receiving property for interstate shipment shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder for loss, damage or injury caused by it or any connecting line, and hence loss of baggage is governed by such Act and carriers may, with the approval of the Commission, limit the value of baggage which a passenger may carry free. L. & N. Ry. Co. v. Miller (Ky., 1914), 162 S. W. 73, 75.

(h) By express provision of the Carmack Amendment and the Act of June 18, 1910, the subject of passengers' baggage transported in interstate commerce has been taken over by Congress and is subject to the regulations of the Interstate Commerce Commission, and questions arising thereunder are to be controlled by the decisions of the Supreme Court of the United States. Barstow v. N. Y., N. H. & H. Ry. Co. (N. Y. App. Div. 1913), 143 N. Y. Supp., 983, 990.

(i) Where the rate of passenger fare is based upon the cost of transporting the passenger, together with the cost of transporting 150 lbs. of baggage of a value not exceeding $100, and the passenger's ticket and baggage check stipulate that such limitation shall apply unless a greater value is declared and excess charges paid, and the carrier has filed schedules and published and posted notice providing for excess charges, in compliance with the provisions of the Interstate Commerce Act and regulations of the Commission, the amount of the passenger's recovery in case of loss of baggage is limited to $100, even though the passenger may at the time of purchasing ticket have no actual knowledge of the limitation. Barstoe v. N. Y. N. H. & H. Ry. Co., 143 N. Y. Supp. 983, 991.

(j) Plaintiffs delivered their trunks of the value of $425.40 to the St. L. I. M. & S. Ry. to be transported as baggage between Helena, Ark., and Dallas, Tex. Plaintiffs made no declaration as to the value at the time of purchasing their tickets, though the carrier's tariff rule provided that unless a greater sum is declared by the passenger and charges paid for increased value, the baggage shall be deemed and agreed to be not in excess of $100. Plaintiffs had no knowledge of this rule. The trunks were lost in transit. HELD, that such failure on the part of the plaintiffs to declare the value

of the baggage did not relieve the carrier from liability for the full value. The relation of carrier and shipper was complete when plaintiffs paid their fares and offered their baggage for shipment, and its reception and acceptance by the carrier; plaintiffs then becoming liable for payment of the tariff rates in excess of the value of $100. St. L. I. M. & S. Ry. Co. v. Faulkner (Ark., 1914), 164 S. W. 763.

(k) A provision in a ticket, limiting baggage liability to "$100 in value for a whole ticket," made in accordance with a tariff on file with the Commission, governs, even where the property is lost through the negligence of the carrier, when the passenger checks baggage without declaring a greater value and offering to pay a reasonable charge for the extra service. Wright v. S. P. Co. (Mo. App. 1914), 167 S. W. 1137.

(l) The complainant attacked the rates for the transportation of excess baggage and baggage of excess value on the lines of 69 selected carriers throughout the country. As a rule, the purchaser of a first-class ticket or mileage book is entitled to receive in addition to his own transportation the transportation of not more than 150 lbs. of baggage of a value not exceeding $100, under rules and regulations prescribed by the carriers. For a child traveling on a half-rate ticket the allowance is diminished proportionately. If the weight of the baggage carried exceeds the allowance named in the tariffs, it is known as excess baggage and a charge is made for its transportation. A charge is also exacted if the value of the baggage, as declared at the time of delivery to the carrier, exceeds that stipulated in the tariff. The rates attacked were practically uniform, based as a rule upon 16 2-3 per cent of the one-way first-class passenger fare, with a minimum rate of 15c per 100 lbs. and a minimum charge of 25c. (In some sections of the West the basis was 12 per cent instead of 16 2-3 and in New England there was a minimum charge of 15c with an arbitrary scale, graduated until the fare amounted to $4.20, from which point the 16 2-3 per cent basis applied.) The charge imposed for baggage of value in excess of $100 was, for each $100 or fraction thereof, generally equivalent to ten per cent of the rate for 100 lbs. of excess baggage, with a minimum rate of 10c per $100 and a minimum charge varying from 10c to 25c for increased valuation. The present system of computing rates on baggage was adopted generally about July 1, 1908, supplanting as a rule a system of charges based upon 12 or 12½ per cent of the first-class fare. Except in New England, Trunk Line and Central Passenger Ass'n, territories, excess baggage books, similar to mileage books, are in use throughout the country, by the use of which passengers may save 20 per cent of the regular excess baggage charge. No data were submitted concerning the cost of transporting baggage. It appears that the baggage service had grown up as an incident to the transportation of passengers and ordinary considerations of rate making have had but slight weight in fixing the allowances. The existing method of computing the rates seems to be the result of compromise, and substantially satisfactory to all concerned, on account of its uniformity and simplicity. It was admitted that the basis in use was not a scientific one. While each person paying full fare is allowed 150 lbs. of baggage, not more than one passenger out of six or seven avails himself of the privilege, while tests showed an average amount of baggage checked per ticket as 20.89 lbs. Concerning the valuation charges levied on baggage exceeding $100 in value the following conditions taken from the tariff of the Penn. R. R. appeared fairly representative of those prescribed by the carriers: (a) The carrier will not accept baggage of one passenger exceeding $2,500 in value. (b) Unless otherwise declared and paid for, the baggage of an adult shall be deemed and agreed to be of value not exceeding $100, of a child traveling on half ticket $50. (c) If the passenger declares a greater value than $100 for an adult or $50 for a child, there will be an additional charge for each $100 or fraction thereof above such allowance equal to the charge for ten lbs. of excess baggage. (d) The minimum rate will be 10c per $100 or fraction, and the minimum charge for increased valuation 10c. (e) Charges for declared excess valuation must be prepaid and check issued showing declared valuation and amount collected. (The minimum charge for increased valuation varies, some companies naming a minimum of 25c.) These regulations may apply to baggage within the 150-lb. limit as well as to baggage weighing more. The charge for the transportation of baggage of a value exceeding $100 is the product of two factors, the value in excess of $100 and the rate for

excess weight, the latter itself being a combination of the various elements, including value, that are considered in prescribing rates. A striking feature of the matter was this: The allowance to a purchaser of a ticket was 150 lbs. of baggage of a value not exceeding $100. Apparently the carriers proceeded upon the assumption that the value of 150 lbs. of baggage is usually $100. In making rates for the transportation of excess baggage, however, there was no proportionate increase in the amount of liability. For instance, the liability in connection with the transportation of a passenger's baggage weighing 1,500 lbs. is no greater ordinarily than for 150 lbs., although additional charges are paid on the excess over 150 lbs., unless charges are prepaid for the value of the excess. HELD, that the tariffs of the carriers should be amended, so that the charges for excess value should not exceed those named below:

Unless a greater sum is declared by the passenger and charges paid for increased valuation at time of delivery to carrier, the value of baggage up to and including 150 pounds, belonging to or checked for an adult passenger shall be deemed and agreed to be not in excess of $100, and the value of baggage up to and including 75 pounds, belonging to or checked for a child traveling on half ticekt shall be deemed and agreed not to be in excess of $50; and the value of baggage exceeding the said allowances of 150 and 75 pounds, respectively, upon which charges are paid in accordance with the tariffs prescribing rates for the transportation of baggage of excess weight, shall be deemed and agreed to be not in excess of 66 2-3 cents per pound. If the passenger at the time of checking baggage declares a value greater than $100 for the baggage of an adult or $50 for that of a child traveling on a half ticket, or in case the weight of the baggage exceeds that allowed under the tariffs in connection with the transportation of a passenger, declares a value greater than 66 2-3 cents per pound, there will be an additional charge at the rate of 10 cents for each $100 or fraction thereof above such agreed maximum values. The minimum charge for increased valuation will be 10 cents. No order entered concerning excess baggage. National Baggage Committee v. A. T. & S. F. Ry. Co., 32 I. C. C. 152.

(m) In Herbeck-Demer Co. v. B. & O. R. R. Co., 17 I. C. C. 88, it was held that there is no undue discrimination against purchasers of first-class tickets who do not take advantage of the privilege of carrying baggage. National Baggage Com. v. A. T. & S. F. Ry., 32 I. C. C. 152, 157.

(n) It is obvious that there is no necessary relation between fare of a passenger and the charge for transporting baggage. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152. 157.

(o) It has been decided that regulation such as are contained in carriers' tariffs governing the transportation of baggage and charges therefor do not change the rule of the common law as to liability. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 160.

(p) Under the rule of the common law the carrier becomes an insurer of the safety of baggage against accidents not the act of God nor the public enemy, or the fault of the passenger; but this liability may be restricted under certain conditions. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152. 159.

(q) Under the tariffs heretofore in effect, carriers generally assume liability not to exceed $100 for baggage transported not exceeding 150 pounds in weight, but make no proportionate increase in the liability assumed on account of the increased weight. HELD, that this is unreasonable on its face and is an unlawful attempt on the part of the carrier to limit its liability for loss or damage. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152. 159.

(r) Even a conclusive showing that present baggage rates are higher than those in effect prior to July 1, 1908, would be of no importance in the consideration of the present rates in the absence of showing that the former rates were reasonable, or that transportation conditions then were the same as now; and, further, since the increased rates became effective after the amendment of 1910 to the act, placed upon the carriers the burden of proving justification for increased charges. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 154.

(s) The courts have held that the transportation of a certain amount of a passenger's baggage is not gratuitous, the compensation therefor being included in the fare of the passenger. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152.

(t) The Commission investigated the reasonableness of baggage regulations whereby pentagonal trunks of the National Cash Register Company and the Toledo Scale Company would be excluded from the regular baggage service. By far the greater proportion of the sales of each is effected by the personal solicitation of traveling salesmen, of whom each company employs a large number. Samples of the cash registers and scales are carried by the salesmen in trunks which accompany them as baggage, each trunk containing but one complete machine. The dimensions of these trunks vary to some slight extent, but all of them are well within the limits set forth in respondents' baggage regulations. The surface of the trunks may be described in general consisting of seven planes. The ends of each trunk are parallel, and a cross section at any of the trunks at any point between and parallel to the ends is pentagonal in outline. The trunks are described in the record as "pentagonal trunks," and will be so referred to herein. It is not shown that these trunks are more dangerous to handle than other articles of similar weight, and the evidence indicates that most of the difficulty in handling arises from their weight. The adoption of the trunks recommended by respondents would not obviate this difficulty. It is conclusively shown that it is necessary in marketing protestants' products to utilize the services of traveling salesmen, and that the best results can be obtained only through actual demonstration by salesmen on sample machines which are in perfect condition. The evidence is uncontradicted that in the practical pursuit of their profession these salesmen are dependent upon the baggage service, and that there is no satisfactory substitute. It appears from the record that carriers in trunk line and central passenger association territories would be satisfied with a modification of the proposed rule which would permit pentagonal trunks to be carried as at present. HELD, that since the proposed rule would render practically valueless more than 1,000 trunks of a type which is now and has been for many years carried by respondents, and would seriously interfere with the conduct of protestants' business without producing any corresponding benefit for respondents, the proposed rule is arbitrary and unreasonable in so far as it is intended to exclude from the regular baggage service pentagonal trunks which are within the present limits as to weight and dimensions. Regulations Restricting the Shape of Baggage, 33 I. C. C. 266.

(u) Common law liability for safety of, may be restricted under certain conditions. National Baggage Committee v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 159.

(v) At common law, the transportation of a passenger's baggage went along with the carriage of the passenger himself, and as incident thereto, and the carrier was liable for its loss. But the carrier has a legal right to enter into a contract with a passenger limiting such liability. The expression that the parties may contract for a limited liability implies, of course, that the passenger must have knowledge of the restriction. That is, the passenger must have his attention called to the restriction. And the mere fact that there is printed on the passenger's ticket and on his baggage check a statement of limited liability, will not suffice to show the passenger's knowledge and consent. Beaham v. N. Y. C. & H. R. R. Co. (Mo.), 174 S. W., 150, 153.

(w) Where a passenger went on a trip arriving at destination in the afternoon, and there told the station agent that she would not claim her trunk until the next day, and returned the next morning to get the trunk, which in the meantime had been destroyed by fire, held that the liability of the carrier as an insurer remained for a reasonable time after the arrival of the trunk, and such reasonable time not having elapsed, it was liable for the loss. Harris v. Southern Ry. Co. (S. C. 1915), 85 S. E. 158, 160.

§12. Free Transportation.

See Courts, §10 (c); Free Transportation.

(a) A stipulation in a free pass exempting the carrier from liability for personal injuries to the passenger, is valid and binding on the latter. C. & W. C. Ry. Co. v. Thompson, 34 S. Ct. 964; 234 U. S. 576; 58 L. ed —.

(b) A pass issued by a carrier for the transportation of the wife of an employe must be deemed to be issued gratuitously, since the statute applies to it the term "free pass," and since section 2 of the Act of June 29, 1906, forbids the charging by a carrier of "a greater or less or different compensa-

tion" for the transportation of passengers from that in its published rates. C. & W. C. Ry. Co. v. Thompson, 34 S. Ct. 964; 234 U. S. 576; 58 L. ed —.

(c) The gift by interstate carriers of state passes to public officials and others not shippers is an evil not directly within the power of the Commission to redress, but the Commission will not lose sight of the practice when the rates of such companies are called in question. Montana Pass Situation, 29 I. C. C. 411.

(d) Carriers' practices in granting free transportation under section 22 must not result in undue preference or prejudice under section 3. Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406, 408.

(e) The provision of the Hepburn Act permitting a railroad company to issue free transportation to its employes and members of their families is an exception to the rule that a stipulation in a free pass given by a carrier, to the effect that the person accepting it assumes all risks of injury in transportation, is enforceable. As between carrier and employe, the privilege and benefit of being afforded free transportation may be regarded as part of the consideration for the employe's services, and treated as an element of value within the contemplation of both parties at the time of entering into the contract of employment. C. & W. C. Ry. Co. v. Thompson (Ga. 1913), 80 S. E. 1097, 1099; affirming, 79 S. E. 242.

(f) The term "family," as used in paragraph 5 of section 1 of the Interstate Commerce Act, is employed in the narrower sense as meaning a collective body of persons who live in one house under one head or manager, and hence a father not living with his son, a railway employe, falls within the prohibition of the statute. Wentz v. C. B. & Q. R. R Co. (Mo. 1914), 168 S. W. 1166, 1172.

(g) The Commission submitted a preliminary report in partial compliance with Senate resolution 153, relative to passes granted to legislators, other public officials, attorneys, newspaper representatives, and various persons during the calendar year 1913. The L. & N. R. R. issued 11,805 passes of the value of $130,839.65, those issued to public officials being distributed as follows: Annual or term passes, $22,939.89; trip passes, $35,214.30; other forms, $3,573.40; total, $61,727.59. The N. C. & St. L. Ry. issued 22,255 passes, of the value of $209,420, those to public officials being distributed as follows: Annual or term, $11,305.51; trip, $151,339.79; other forms, $1,879.51; total, $164,524.81. The Commission found that the threads represented by these passes tied thousands of citizens to the carriers, through improper relations. Financial Relations, etc., of Certain Carriers, 31 I. C. C. 261.

(h) The indiscriminate issuing of passes by trunk lines to persons ostensibly officers and employes of a tap line, but in fact officers or employes of the controlling lumber company, who use the free transportation when traveling solely in the interest of the lumber company, is an abuse and a discriminatory practice. The Tap Line Case, 31 I. C. C. 490, 494.

(i) Free passes issued to members of legislative bodies and others. Financial investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 34; in re Financial Relations, etc., of Certain Carriers, 31 I. C. C. 261.

(j) Annual, short-term and trip passes granted by seventy-eight roads in official classification. Five Per Cent. Case, 31 I. C. C. 351, 410.

(k) Indiscriminate issuing of passes by trunk lines to officers and employes of tap lines largely corrected. Tap Line Case, 31 I. C. C. 490, 494.

(l) A railroad company, which is a common carrier subject to the Act, may, in pursuance of a standing practice, issue passes to certain of the officers, agents, and employees of various trans-Atlantic steamship lines, such lines not being carriers subject to the Act, while other passengers who are transported between the same points are required to pay the published fares. United States v. Erie R. Co., 35 Sup. Ct. Rep. 396, 397.

(m) Caretakers of banana shipments were granted free transportation both ways. Upon return trip to New Orleans they were detained at Fort Worth, Tex., on account of floods, and rather than wait paid their fares via other lines. Reparation denied. Fruit Dispatch Co. v. T. & P. Ry. Co., Unrep. Op. A-936.

(n) If a contract between a railroad company and an express company pro-

vides that the latter's messenger shall render service to the railroad company and in consideration thereof receive a sum of money and also two passes a month for use of his family, such a pass is a "free pass," in the sense intended by the Hepburn Act (Act June 29, 1906, c. 3591, 34 Stat. 584 (U. S. Comp. St. 1913, § 8563), and a clause printed on the pass, whereby the passenger undertakes to assume all risks, is binding on the party using it. Morris v. West Jersey & S. R. Co. (N. J. 1915) 94 Atl. 593.

§14. Through Routes and Rates.

See Discrimination, §3 (q); Through Routes and Joint Rates.

(a) That the aggregate of intermediate fares prescribed by state authority and not voluntarily accepted or used in interstate fare is less than the through interstate fare shows no violation of the Act to regulate commerce. Railroad Com. of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491.

(b) Plaintiff purchased a ticket from Athens, Ga., to Dallas, Tex., via the S. A. L. Ry. to Birmingham, Ala., the A. G. L. R. R. to Meridian, Miss., and other lines beyond. The ticket was rejected by the defendant's conductor, and plaintiff brought suit. At the time of purchase the only joint rate provided for a through ticket shown by a tariff on file with the Commission was by a different route, though the rate was the same. The tariff expressly prohibited through tickets via the route expressed in the ticket, though prior thereto a joint circular had been issued by the S. A. L. Ry. and G. S. R. R., but not filed, establishing the joint rate and through route for which the ticket was sold, and section 36 of the regulations of the Commission provided that a carrier might apply through rates, to or from which no joint rate is published, lawfully published bases, local or proportional, in connection with other lawfully published tariffs. HELD, that such regulation being applicable only to through fares to or from points to or from which no joint fare was published, did not validate a ticket over a prohibited route. S. A. L. Ry. Co. v. Patrick (Ala., 1914), 65 So. 437.

(c) A connecting carrier cannot legally make the initial carrier its agent to sell a ticket over a route prohibited by their joint tariff on file with the Commission. S. A. L. Ry. v. Patrick (Ala., 1914), 65 So. 437, 439.

(d) Complainants, proprietors of hotels at summer resorts on the T. C. R. R., complained of the refusal of the L. & N. R. R. and N. C. & St. L. Ry. to join with the T. C. R. R. in the establishment of through routes and joint interstate passenger fares to such resorts, while parties to such routes and fares to resort points on the S. Ry., I. C. R. R. and other lines. One of complainant's hotels had a capacity of 125 guests, another of 160; average yearly attendance, 614 and 2,500 guests, respectively. The T. C. R. R. connects with the I. C. R. R. and C. N. O. & T. P. Ry. and through tickets are sold from points on these lines to points involved; but the station of the T. C. R. R. and the joint station of the L. & N. R. R. and N. C. & St. L. Ry. at Nashville are seven-eighths of a mile apart, and if baggage were checked through to destination it would have to be drayed between stations. It appeared, however, that the latter lines have arrangements with the S. Ry. and I. C. R. R. for transfer of passengers and baggage under similar circumstances, a reasonable charge being made therefor. HELD, that the refusal of the L. & N. R. R. and N. C. & St. L. Ry. to establish the routes and fares prayed, subjects complainants and the traveling public to undue prejudice. Burford v. L. & N. R. R. Co., 31 I. C. C. 182.

(e) Complainant, a common carrier operating steamers between San Francisco, San Pedro and San Diego, Cal., asked that defendants be required to establish through routes and joint fares on first-class passenger traffic to the same extent as was maintained with the Pacific Coast S. S. Co. and San Francisco & Portland S. S. Co. Of the defendants, only the S. P. Co. and the A. T. & S. F. Ry. had rails extending from San Francisco to Los Angeles, Cal. Complainant operated two steamers valued at $1,250,000 each, and had a paid-in capital of $750,000. Complainant's steamers had a larger carrying capacity, made more frequent trips and better time, and furnished berths and meals superior to those of their competitors. Complainant's boats carried over 120,000 passengers per annum, many of whom had expressed a desire for through

transportation. HELD, (1) that defendants should establish through routes and joint fares with complainant; (2) that the Commission has jurisdiction to require both the W. P. Ry. and S. P. L. A. & S. L. R. R., which have no rail lines between San Francisco and Los Angeles, and the S. P. Co. and A. T. & S. F. Ry., which have such rail lines, to join in through routes and joint fares, notwithstanding the limitation in section 15 of the Act; (3) by maintaining through routes and joint fares with the P. C. S. S. Co. and S. F. & P. S. S. Co., and refusing them to complainant, defendants violated section 3 of the Act, and (4) by accepting less than their local fare to the port as their division of fares in connection with the P. C. S. S. Co. and S. F. S. S. Co., and charging full local fare to passengers who desired to continue via complainant's line, they discriminated in their rates and charges between complainant and its competitors. Pacific Nav. Co. v S. P. Co., 31 I. C. C. 472.

(f) Complainant attacked the practice of the Crosby Transp. Co. in selling through passenger tickets between points in Michigan and points in Wisconsin, via its boats and the line of the D. G. H. & M. Ry., while refusing to sell such tickets via its boats and the line of the G. R. G. H. & M. Ry., as unjustly discriminatory. Both the D. G. H. & M. Ry. and the G. R. G. H. & M. Ry., connected Grand Rapids, Mich., with Grand Haven, from which point the boats of the Crosby line connected with Milwaukee, Wis. While both roads met arriving boats in the summer, during the other months travelers were obliged to wait in Grand Haven approximately three hours to continue their trip via the D. G. H. & M. Ry. The G. R. G. H. & M. Ry. made connections the year around. The dock at Grand Haven used by the Crosby Co. was owned by the interests which controlled the D. G. H. & M. Ry. HELD (1) that the practice of selling through tickets via the D. G. H. & M. Ry., while refusing to sell them via the G. R. G. H. & M. Ry. was unjustly discriminatory: (2) that the electric line not being a competitor of the boat line the fact that the docks used by it belonged to the D. G. H. & M. Ry. would not exempt it from joining in through fares with the electric line. Dammon v. Crosby Transp. Co., 33 I. C. C. 448.

(g) Through passenger fare from Ridgeland, S. C., to Savannah, Ga., which exceeds combination of intermediates, factor of which is an intrastate fare not found unreasonable. Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896.

(h) Upon complaint that through fare exceeded combination of intermediates, a factor of which is an intrastate fare. HELD, that the situation does not come within the prohibitions of the amended fourth section. Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896.

(i) At common law, the transportation of a passenger's baggage went along with the carriage of the passenger himself, and as incident thereto, and the carrier was liable for its loss. But the carrier has a legal right to enter into a contract with a passenger limiting such liability. The expression that the parties may contract for a limited liability implies, of course, that the passenger must have knowledge of the restriction. That is, the passenger must have his attention called to the restriction. And the mere fact that there is printed on the passenger's ticket and on his baggage check a statement of limited liability, will not suffice to show the passenger's knowledge and consent. Beaham v. N. Y. C. & H. R. R. Co. (Mo., 1915) 174 S. W., 150, 153.

§14½. Tourist Cars.

(a) There is no necessity to order the railway companies to provide for the reservation of seats during the daytime in their tourist cars. These tourist cars are really second-class sleepers. They are chiefly used by those who are taking a long journey and cannot afford to pay for accommodation in the first-class sleeping cars. The suggestion is made that a person traveling a short distance might for a few hours be permitted to reserve a seat in a tourist car. There is no necessity for this. The first-class cars are more comfortable than the tourist cars, and often less crowded. The tourist cars are used chiefly by those taking a long journey, and, if seating accommodation was reserved during the daytime, it might prevent those for whom the cars were intended securing proper accommodation. A large number of women and children are usually to be found on tourist cars, and it seems undesirable that they should be disturbed by the class of passenger that one sometimes finds traveling short

distances on a second-class ticket on a railway. (Can. Ry. Com., 1914.) Day Seats in Tourist Sleepers. File 22694.

IV. CLAIMS FOR DAMAGES.

See Claims.

§14¾. In General.

(a) Carrier's refusal to refund unused portion of passenger ticket on basis of local fare to Syracuse, N. Y., not found unreasonable. Reparation awarded on basis of fare in effect to next more distant point to which tickets on extra fare train from New York City to Chicago are available. Kennedy v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A-776.

(b) Defendants expected to provide tariff rule to effect that refund will be made on unused portions of tickets on basis of fare to next more distant point to which tickets on extra fare train are available. Kennedy v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A-776.

(c) Refund on unused portion of ticket made on basis of fare in effect to next more distant point to which tickets on extra fare train from New York City to Chicago are available. Kennedy v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A-776.

(d) Where an interstate ticket does not indicate any route on its face, it only applies via the most direct route. Sanders v. A. C. L. R. Co. (S. C. 1915), 85 S. E. 167, 168.

(e) No liability can be predicated against the carrier for its refusal to violate the Interstate Commerce Act by permitting a passenger to use a ticket over a route it did not apply to. Sanders v. A. C. L. R. Co. (S. C. 1915), 85 S. E. 167, 168.

(f) A passenger desiring to purchase a ticket for an interstate journey by a circuitous route was given one not specifying any route, and therefore good over the direct route only. The ticket was paid for as over the direct route and the rate over the circuitous route would have been higher. After boarding the train he was repeatedly warned that the ticket would not be honored beyond a certain point, and upon his refusal to pay a cash fare after reaching such point he was ejected. The ticket tendered could not have been accepted over the route the passenger desired to take without violation of the Interstate Commerce Act. HELD, the passenger was not entitled to recovery, since his damages were not due to any fault of the railroad, but to his own negligence, after he had been warned that the ticket could not be honored under the Interstate Commerce Act after a certain point. Sanders v. Atlantic Coast Line R. Co., (S. C. 1915), 85 S. E. 167.

§15. Errors of Ticket Agents.

See Erroneous Rate.

(a) Through error of initial carrier, complainant purchased a 7-day limited ticket instead of a 30-day limited one; connecting carriers collected cash from complainant because time limit had expired, and therefore exempt from joining in making refund. Burden solely upon the initial carrier. Dierks v. S. P. Co., Unrep. Op. A460.

(b) A carrier is liable for the negligent act of its agent in not permitting a passenger to take advantage of lawfully published interstate rates or facilities. Sanders v. A. C. L. R. Co. (S. C. 1915), 85 S. E. 167, 169.

§16. Lost Tickets.

(a) Complainant demanded defendants refund the value of the unused portion of a ticket from Albany, Ga., to Philadelphia, Pa., lost by him en route. The ticket called for passage by rail to Savannah, and thence by ocean carrier to destination. While en route to Savannah he lost the portion of the ticket entitling him to ocean transportation, promptly notified the ocean carrier of his loss, and purchased another ticket to Philadelphia. The issuing carrier's tariff provided against the redemption of mislaid, lost, destroyed or stolen passenger tickets, and stated that requests for redemption of unused portions of tickets would be honored only when accompanied by the unused transportation. The carrier contended that if compelled to make refund on tickets alleged to have been stolen it would be obliged to adopt burdensome practices and records to protect itself against fraudulent demands. Even an accounting system conducted at enormous expense would not fully protect against fraudulent claims. HELD, that it would be unjust and unfair to carriers, and involve them in additional expense out of all proportion to the results to be obtained, to require them to make refunds of the

value of lost passenger tickets. Complaint dismissed. Miller v. A. C. L. R. R. Co., 29 I. C. C. 526.

PAST RATES

See Evidence, §13 (1), (pp), §43; Reasonableness of Rates, §25.

PEDDLER CARS.

See Cars and Car Supply, §9¾.

(a) The Commission considered a proposed increase in the minimum weight applicable generally to packing-house products and other commodities to be shipped in peddler cars at the fourth-class rate between points in Western Trunk Line territory, from 10,000 to 12,000 pounds. The existing rule governing peddler cars was also amended by inserting the words "and other freight" after the list of commodities which might be included in making up the minimum. The movements of peddler cars was a special service, which could only be used by a few of the larger packers, and the routes selected by the packers often passed through junctions through which ordinary traffic did not pass; but the peddler-car routes averaged less than 280 miles, the service was not greater than that rendered in connection with ordinary less-than-carload traffic, the packer paid the regular less-than-carload rates, guaranteed a minimum per car earning, and saved the carrier the expense of refrigeration. Car-mile earnings ranged from 17.55c to 20.1c. The carriers' earnings were largely increased by penalties exacted, where the deficit in weight was way-billed at the fourth-class rate; the larger packers paying deficits on from 25 to 35 per cent of the cars handled for them. From 66 2/3 to 75 per cent of peddler cars were loaded to 10,000 pounds, and on most shipments 12,000 pounds could not be loaded, because orders could not be secured for sufficient quantities. HELD, that the proposed increased minimum had not been justified. Rule under suspension cancelled. Rules Governing Shipments of Freight in Peddler Cars, 32 I. C. C. 428.

PENALTY RATES.

(a) So-called "penalty rates" on cotton to compress points are condemned by the Commission. It is intended that the rate to the compressing point shall be so fixed that the shipper may direct his shipment to any desired port without incurring any penalty or having to pay more than the reasonable through rate from originating point to port. Mobile Chamber of Commerce v. M. & O. R. R., 32 I. C. C. 272, 276.

(b) The system of rates known as "penalty rates" (whereby a relatively high rate is charged on cotton from point of origin to compressing point, and if handled to the port by the same carrier such charge applied on the through rate) is wholly out of line with the ethics of modern ratemaking. One rate should be established from the point of origin to the compress point, and this rate should be no more than the reasonable local rate. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 275.

(c) Penalty rates is a system wholly out of line with the ethics of modern rate making. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 275.

(d) No valid reason for "penalty rate system." Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 276.

PERCENTAGE SYSTEM

See Basing Points and Lines, §1 (a), §2 (g), §3 (b), (g); Blanket Rates, §13 (a); Claims, §2 (e); Class Rates, §2 (e); Commodity Rates, §2 (b); Equalization of Rates, §3 (c), §8 (a), (b); Evidence, §14 (5), (cc), §20 (g); Express Companies, §23.

PER DIEM CHARGES

See Demurrage, §2 (n); Facilities and Privileges, §15 (4h); Tap Lines, §7 (o).

PERSONAL INJURIES.

See Courts, §10 (c); Passenger Fares and Facilities, §12 (a); Sleeping Car Rates, (f).

(a) The wife of an employe of the C. & W. C. Ry. sustained personal injuries while traveling on that line on a pass that purported to exempt the company from liability, the pass having been issued gratuitously under the Hepburn Act. On suit the state court, in 79 S. E. 242, held that under the Act the

pass was not a free pass, but was issued in consideration of the services of the employe. HELD, that a question was presented under the act, reviewable by the Federal Supreme Court on writ of error. C. & W. C. Ry. Co. v. Thompson, 34 Sup. Ct. 964; 234 U. S. 576; 58 L. ed. —.

(b) A stipulation in a free pass exempting the carrier from liability for personal injuries to the passenger is valid and binding on the latter. C. & W. C. Ry. Co. v. Thompson, 34 Sup. Ct. 964; 234 U. S. 576; 58 L. ed —.

(c) No right of action arises under the Interstate Commerce Act for the death of a carpenter employed by a carrier to build a coal chute, and who, while passing through the carrier's switch yards, is run over and killed by an engine in charge of the carrier's engineer. Voris v. C. M. & St. P. Ry. Co. (Mo. App., 1913), 157 S. W. 835.

(d) A carrier cannot by including in its tariff filed with the Commission, a provision releasing it from all liability for injuries to one riding on a drover's pass, though caused by the carrier's negligence, relieve itself from responsibility for such negligence. Wilcox v. E. R. R. Co. (1914), 147 N. Y. S. 360, 366.

(e) In an action by a passenger ejected from a train which reached his destination by a longer route than that called for in his ticket, it is error to instruct that the jury should take into consideration the fact that on previous occasions and at prior times plaintiff had made the trip by the longer route on a similar ticket and without paying additional fare. Ligon v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 647, 649.

(f) The plaintiff was injured while being transported in a car of melons, which he was shipping, in violation of the Commission's regulations. HELD not to defeat his right of recovery, the carrier not on that account being excused from exercising the proper degree of care required under the circumstances. St. L. & S. F. Ry. Co. v. Coy (Ark. 1914), 168 S. W. 1106, 1111.

(g) A carrier had two methods of permitting shipments of potatoes. First, the defendant company might furnish an Eastman heater car, and during the season when heat was required such car was heated by the Eastman Company, for which the shipper paid an extra charge, this charge being collected by the defendant company at the time when it collected its transportation charges, but a separate receipt was given for the heater charges and none of the money collected as a heater charge was retained by the defendant company, but was forwarded to the Eastman Company. Secondly, the defendant company might furnish to the shipper an ordinary box car, and, when the weather required it, the shipper might at his own expense line such car and furnish stove and fuel for heating the same, in which case a transportation charge alone was made. In any event, whether the potatoes were transported at a season of the year when heat was needed or otherwise, or whether transported in an Eastman heater car or in a box car, lined or unlined, the charge for transportation was the same throughout the year. When the potatoes were shipped in a lined car at a season requiring heat, a caretaker was furnished by the shipper at his own expense, and traveled on the defendant's road, as the plaintiff was traveling. When the potatoes were shipped in an ordinary car with lining and heat furnished by the shipper, and a caretaker also furnished by the shipper, the defendant's corporation was not liable for damages sustained by having the potatoes frozen; on the other hand, when the potatoes were shipped in an Eastman heater car the Eastman Company was responsible for any damages sustained by the freezing of the potatoes. Before the shipment started the plaintiff signed a contract with the defendant, by which, in consideration of his carriage upon the freight train, he in terms "voluntarily assumed all risks of accident or damage," and released the defendant from all liability for personal injury sustained by him, whether caused by the negligence of the defendant or its employes, or otherwise. On an outward trip he received an injury for which he sought compensation. HELD, that a contract for exemption signed by the caretaker before the journey began was void, for although he performed nothing for the railroad, he was not carried by the railroad gratuitously, but the freight rate included his passage; that having a right under his employment work to travel with the potatoes, he was entitled to recover damages for injuries sustained during the carriage. Buckley v. Bangor & A. R. Co. (Me. 1915), 93 Atl. 65, 66.

PIPE LINES

I. CONTROL AND REGULATION.
§1. In general.
§2. Constitutionality of Act.
II. AS COMMON CARRIER.
§3. In general.
§4. As interstate carrier.
III. TARIFFS AND PUBLICATION.
§5. In general.

I. CONTROL AND REGULATION.

See Control and Regulation.

§2. Constitutionality of Act.

See Constitutional Law.

(a) Construing the provisions of the Act of June 29, 1906, relative to corporations and persons engaged in the transportation of oil by pipe lines as intended to include existing pipe lines controlled by that combination of companies carrying practically all oil offered between the oil fields east of California and the Atlantic seaboard provided the offerer first sells it to them on their own terms, it cannot be said that Congress has in, enacting the Act, exceeded its powers. United States v. Ohio Oil Co., 34 Sup. Ct. 956, 958; 234 U. S. 548; 58 L. ed —.

II. AS COMMON CARRIER.

See Common Carrier.

§3. In General.

(a) The Standard Oil Co., having of itself and through its subordinates, obtained control of practically all the pipe lines east of California with a view to avoiding the amendment to the first section declaring pipe lines to be common carriers, refused to carry any oil except such as was sold to it or its subordinates on terms dictated by the company. HELD, that the provisions of the Act applied to anyone engaged in the transportation of oil by means of pipe lines. It would not only be a sacrifice of fact to form, but would nullify the Act if the carriage to the seaboard of nearly all the oil east of California were held not to be transportation within its meaning, because by the exercise of their power these carriers imposed as a condition to the carriage a sale to themselves. As applied to them. while the amendment does not require them to continue in operation, it does require them not to continue except as common carriers. United States v. Ohio Oil Co., 34 Sup. Ct. 956; 234 U. S. 548; 58 L. ed. —., reversing in part 204 Fed. 798, enjoining the enforcement of the Commission's order in 24 I. C. C. 1.

(b) A pipe line company having a pipe line used only in conveying oil from its oil wells in one state to its refinery in another state is not a common carrier within the provisions of the act of June 29, 1906, declaring pipe lines to be common carriers in certain cases. United States v. Ohio Coal Co., 34 Sup. Ct. 956, 959; 234 U. S. 548; 58 L. ed. —.

§4. As Interstate Carrier.

See Common Carrier.

(a) The conveyance of oil in pipe lines is interstate commerce, where the owners of such lines are carrying all oil offered, if only the offerers will sell it at their price. United States v. Ohio Oil Co., 34 Sup. Ct., 956, 958; 234 U. S. 548; 58 L. ed. —.

PLEADING AND PRACTICE

See Commerce Court, §9; Courts, §13, VI; Procedure Before Commission, I.

POTENTIAL COMPETITION

See Evidence, §14 (2).

PRECOOLING.

I. JURISDICTION OF COMMISSION.
II. RIGHT OF SHIPPER.
III. EFFICIENCY OF METHOD.
IV. LIABILITY FOR DAMAGE.
V. REASONABLENESS.

CROSS REFERENCES

See Refrigeration.

I. JURISDICTION OF COMMISSION.

See Interstate Commerce Commission, I.

(a) Under section 15 of the Interstate Commerce Act, as amended by the Hepburn Act authorizing the Commission to determine what practices, in respect to rates, are unreasonable, to determine what practices, in respect to transportation, are just, and to require the carriers to conform to those prescribed by the Commission, that body has power to cancel a tariff withdrawing a precooling privilege previously recognized by it, and to require the carrier to conform to its order establishing a certain charge on precooled shipments. A. T. & S. F.

Ry. Co. v. United States, 34 Sup. Ct. 291, 296; 232 U. S. 199; 58 L. ed. —.

(b) Where a precooling service is maintained in connection with traffic moving under refrigeration, and such service is furnished only upon request of those desiring it, it seems proper that the additional expense involved in the maintenance of such service should be charged only to the shippers who request the service, and not be imposed as a burden upon those who do not require and are not given it. R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 22.

II. RIGHT OF SHIPPER.

(a) Under section 1 of the Hepburn Act the carrier has the exclusive right to furnish such refrigeration as may be required in connection with the transportation of fruits, but this does not mean that because a carrier has ice on hand it can compel the shipper to have it refrigerated, where the shipper prefers to precool his fruit and have it forwarded under ventilation only. A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 294; 232 U. S. 199; 58 L. ed. —.

V. REASONABLENESS.

(a) Where shipments of citrus fruits from California to eastern points were precooled by the shippers so as to require no reicing en route, the order of the Commission fixing $7.50 per car as the charge which carriers might make for services rendered in connection with the shipment will not be disturbed on the ground that the carrier is entitled to pay for hauling the ice placed in the bunkers by the shipper, where the Commission evidently proceeded upon the theory the charge for hauling the ice might be considered as absorbed by the carrier in view of the fact that where the shipper precooled the fruit cars are loaded heavier than where standard refrigeration is employed. A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 296; 232 U. S. 199; 58 L. ed. —.

PRESUMPTIONS

See Evidence, IV, §43 (J), §47 (J); Loss and Damage, §11½, §15 (d); Reasonableness of Rates, §16.

PRIVATE CARS

See Cars and Car Supply, §10½; Demurrage, §10, §16 (d).

PROCEDURE BEFORE COMMISSION.

I. PRACTICE.
§1. In general.
II. COMPLAINT.
§2. Form and issues tendered.
§3. Notice of complaint.
§4. Amendment.
§5. Hearing.
§6. Briefs.
§7. Oral argument.
§8. Rehearing.
§9. Costs, attorneys' fees, etc.
III. MOTIONS.
§10. Dismissing complaint.
(1) In general.
(2) Adjustment since filing.
IV. ORDERS OF COMMISSION.
§11. Modification, validity and effect.
§12. Review.
V. PARTIES.
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VI. SET-OFF.
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VII. EFFECT OF EVIDENCE.
§15. Equities of cause.
§16. Judicial notice.
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§18. Requesting information of carrier.
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VIII. DEFENSES AND EVIDENCE.
§20. In general.

CROSS REFERENCES

See Advanced Rates, §1 (I), VI; Blanket Rates, VI; Commerce Court, II; Discrimination, IV, V; Differentials, VI; Equalization of Rates, §2 (d); Evidence, §67 (a); Interstate Commerce Commission, III; Long and Short Hauls, V; Reconsignment, V; Reparation, V; Switch Tracks and Switching, IV; Tap Lines, V; Through Routes and Joint Rates, §23.

I. PRACTICE.

§1. In General.

See Reasonableness of Rates, §1½.

(a) It is the duty of each party before the Commission to present his case at the proper time, which ordinarily is at the time of original hearing. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 95.

(b) Commission can not prescribe rate without investigation and a hearing. In re Express Rates, 28 I. C. C. 132, 138.

(c) The Commission never looks to the niceties of pleading. The mere fact that the word "overcharge" is used instead of "unreasonable exaction" ought not to be permitted to interfere with a trial of the substantial issue presented. Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 367.

(d) While stations named in complaint may furnish a guide to the proper adjustment of remaining stations, the Commission must necessarily confine themselves to the pleadings and make no finding concerning rates to such remaining stations. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 681.

(e) The burden of proof as to reasonableness of rates rests with complainants as to all rates increased prior to the effective date of the amendment of 1910. As to those increased subsequent to that date, the burden is with the carrier. Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 13.

(f) Technicalities not permitted to defeat ends of justice. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623,

(g) No opinion will be expressed with respect to a question not properly presented by the pleadings. Class Rates between Stations in Louisiana, 33 I. C. C. 302, 306.

(h) If parties are unable to agree as to amount of refund due because of incorrect distances, a new and separate complaint should be presented. Curry & Whyte v. D. & I. R. R. R. Co., 32 I. C. C. 162, 170.

§1½. Witnesses.

See Interstate Commerce Commission, §6.

(a) Witness who had not seen shipment and knew nothing except by hearsay is not competent. Northern Mercantile Co. v. S. I. Ry. Co., Unrep. Op. A-207.

II. COMPLAINT.

See Blanket Rates, §6 (qq), §15, §18 (b).

§2. Form and Issues Tendered.

(a) An alleged discrimination not mentioned in the complaint nor distinctly referred to in the record, and even in the briefs only brought out with clearness in complainant's reply, is not properly presented. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 29 I. C. C. 28, 29.

(b) One of ways of showing undue prejudice and disadvantage under third section is by showing unreasonableness in rate under first section and then comparing it with rates to similarly located places. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 164.

(c) Issues not clearly raised in the pleadings cannot be determined by the Commission. Board of Trade of Chicago v. A. T. & S. F. Ry. Co., 29 I. C. C. 438, 444.

(d) While stations named in complaint may furnish a guide to the proper adjustment of the remaining stations, the Commission must necessarily confine itself to the pleadings and make no finding concerning rates to such remaining stations. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 681.

(e) Where the complaint contains no specific request for the establishment of through routes and joint rates, the Commission is without jurisdiction to make an order establishing them. Metropolis Commercial Club v. I. C. R. R. Co., 30 I. C. C. 40, 43.

(f) The question of unjust discrimination or undue preference cannot be considered, where complainants fail to allege any particular violation of the law in such respect. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 632.

(g) Statements contained in brief of alleged facts of which there is no proof, and which are entirely outside the record cannot be considered. Break-Bulk Rates on Grain, 30 I. C. C. 357, 361.

(h) Action delayed on complaint of rates on coke from Connellsville region

to Buffalo because other complaints were filed involving rates to related points and to establish rates from Connellsville region to Buffalo would virtually decide the latter cases. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 416.

(i) Although under the technical rules of pleading usually followed in courts of law, there might be ground for the objection that a complaint did not allege discrimination, it cannot be sustained under the more liberal rules applied by the Commission. Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

(j) Matters which are not mentioned in the complaint cannot be considered at the hearing. Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 322.

(k) No finding should be made as to rates other than for the period specified in the complaint. Crowdus Bros. v. A. T. & S. F. Ry. Co., 32 I. C. C. 355, 358.

(l) A rate relation which would not be changed by proposed rates cannot be considered at the hearing. Cement Rates From Points in Illinois, 32 I. C. C. 368.

(m) Where rates related to those involved are not in issue, if they are not shown to be improperly adjusted, they are competent to indicate that the rates in dispute are disparate. Salt Lake Mattress & Mfg. Co. vs. A. T. & S. F. Ry. Co., 32 I. C. C. 417, 421.

(n) If individual complainants are subjected to unjust or discriminatory rates, under an existing blanket adjustment they should indicate the specific untoward circumstances in which they are severally placed. And where they choose to unite in the allegation of a common grievance, on the record the matter must depend largely upon the validity of that common grievance. Wisconsin & Arkansas Lumber Co. v. St. L. M. I. & S. Ry., 33 I. C. C. 33, 35.

(o) Discrimination in the matter of the absorption of charges, if not alleged in the complaint nor discussed in the record, cannot be considered. City of Nashville v. L. & N. R. R., 33 I. C. C. 76, 90.

(p) Issue can not be broadened to embrace matters in which carriers not parties are interested. Freight Rates from Minnesota Points, 32 I. C. C. 361, 367.

(q) Question of the reasonableness of third-class rate on butter from Parker, S. D., to Des Moines, Iowa, is one properly to be considered in connection with general question reserved for decision in Interior Iowa Cities case, 28 I. C. C. 64. Complaint dismissed without prejudice. Des Moines Poultry & Butter Co. v. C. & N. W. Ry. Co., Unrep. Op. A-910.

(r) To the extent that the petition for intervention goes beyond the issues raised by the original complaint it cannot be considered. Moore & Thompson Paper Co. v. B. & M. R. R., 34 I. C. C. 323.

§4. Amendment.

(a) Amendment of complaint may be permitted at hearing. Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433, 437; Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I C. C. 594.

§5. Hearing.

(a) Objection that complainant was deprived of hearing guaranteed by Act, not sustained where Commission delayed action in case where other complaints were filed involving rates to related points and no effort was made by complainant to formally intervene or participate in such proceedings. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 416.

(b) Reference to the conclusions and rates found reasonable by the Commission in other cases is entirely proper. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 424.

(c) In some cases the testimony of shippers is essential. This is especially true when reparation is to be awarded. Minneapolis Civic & Commerce Ass'n v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 669, 670.

(d) Although under the technical rules of pleading usually followed in courts of law there might be ground for the objection that a complaint did not allege discrimination it cannot be sustained under the more liberal rules applied by the Commission. Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

§6. Briefs.

See Infra, §14½ (a).

(a) Statement contained in a brief of

alleged facts of which there is no proof, and which are entirely outside the record, cannot be accepted as contradicting testimony furnished by a party at the hearing. Break-Bulk Rates on Grain, 30 I. C. C. 357, 362.

§8. Rehearing.

(a) The Commission granted complainants a rehearing in 27 I. C. C. 168, concerning the rate on coal from the Connellsville, Pa., region to the blast furnaces and steel mills in and about Buffalo, N. Y. In 1910 the rate was increased from $1.65 per ton to $1.85. Complainants attacked the increased rate as unreasonable and discriminatory compared with rates enjoyed by competitors in the Pittsburgh and Gary districts and eastern Pennsylvania. They also applied to the Commission to suspend the rate, but their petition was denied on the ground that the rate had already become effective. Before the Commission could dispose of the issues in the original case a number of complaints involving coal rates from the Connellsville region to Buffalo and various other consuming points were filed. While these cases were pending complainants in the Wickwire case were advised that action was delayed therein because of its connection with these other cases, it not appearing just to the Commission to permit the individual Connellsville-Buffalo rate to determine all the related rates. The Commission considered the related coke cases in all their details, and as a result the rate of $1.85 to Buffalo was declared reasonable. Complainants thereupon petitioned for a rehearing, and had the case reassigned for argument, without further testimony. Complainant's position on rehearing was that the proof offered by the defendants did not sustain the burden imposed on them by the amendment of 1910 of justifying the increased rate; and that the Commission in deciding that the increase of rate was justified went outside of the record in violation of complainant's rights. No new evidence being adduced by complainants, nor reason shown why the Commission should depart from its original finding that the rate of $1.85 per ton for transportation of coke from the Connellsville region to Buffalo, N. Y., is reasonable; HELD, that complainants' allegations of error in the original decision have not been sustained. Complaint dismissed. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415.

(b) Failure of the Commission in taking notice of the results reached by it in other cases to enumerate such cases in the record, so that matters of law may be saved, is cured by the enumeration of such cases on rehearing. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 425.

III. MOTIONS.

§10. Dismissing Complaint.

(1) In general.

(a) No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Burford v. L. & N. R. R. Co., 31 I. C. C. 182, 185.

(b) No complaint shall at any time be dismissed because of absence of direct damage to complainant. Burford v. L. & N. R. R. Co., 31 I. C. C. 182, 185.

(c) Complaint, alleging that rates on coal tar from Fort Dodge, Iowa, to Moline, Ill., were unreasonable, dismissed for lack of evidence. Lewis Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-819.

(d) No appearance for complainant. Complaint alleging unreasonable charges on coal from Rapson, Colo., to Carmen, Okla., dismissed for want of prosecution. Rapson Coal Mining Co. v. K. C. M. & O. Ry. Co., Unrep. Op. A-824.

(e) Complaint alleging unreasonable charges on coal from Rapson, Colo., to Custer City, Okla., refused at that point, and later reconsigned to Carmen, Okla., dismissed for want of prosecution. Rapson Coal Mining Co. v. K. C. M. & O. Ry. Co., Unrep. Op. A-824.

(f) Complainant did not appear in person at hearing and no evidence was presented on his behalf. Complaint dismissed. Wallis v. T. & N. O. R. R. Co., Unrep. Op. A-852.

(g) An issue can not be broadened to embrace matters in which carriers, not parties, are interested. Freight Rates from Minnesota Points, 32 I. C. C. 361, 367.

§10—(2). Adjustment Since Filing.

(a) Carriers having adjusted rates on pears from Delaware division of the P. R. R., to Hinton, W. Va., via Potomac Yard, Va., complaint will be dismissed.

Hinton Fruit & Produce Co. v. C. & O. Ry. Co., Unrep. Op. A-312.

IV. ORDERS OF COMMISSION.

See Interstate Commerce Commission, §5.

§11. Modification, Validity and Effect.

See Commerce Court, §2.

(a) The restriction of a complaint attacking as unreasonable rates on traffic moving between designated points does not preclude the Commission from applying to that traffic a rating which evidently should be made to apply generally. Wallingford v. A. T. & S. F. Ry. Co., 30 I. C. C. 19, 20.

(b) Ppon filing of a petition by complainant and defendant case was reopened which had been dismissed for want of prosecution. National Coal Co. v. B. & O. R. R. Co., Unrep. Op. A-617.

§12. Review of Commission's Orders.

See Commerce Court, I. A.; Courts, §5.

V. PARTIES.

See Reparation, §6.

§13. Necessary and Proper Parties.

See Association; Loss and Damage, §17.

(a) The provisions of the Act with respect to those who may apply to the Commission concerning things done or omitted are broad. Primarily, its authority is over the subject matter of a complaint and the parties complained of; and, where the proper parties defendant are brought before it, full hearing had and the material facts presented, the Commission is not deprived of jurisdiction on the merits merely because delegation to the officers presenting the complaint of the right to do so in the name of the United States is not affirmatively shown. United States v. U. P. Ry. Co., 28 I. C. C. 518, 520.

(b) Necessary parties defendant are not before the Commission, and it would be useless to make the correct party an additional party defendant, because the claims against it are already barred under the two-year limitation of the Act. Complaint dismissed. Graham & Co. v. C. I. Ry. Co., Unrep. Op. A256.

(c) No order entered against carriers not made parties defendant. Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 19.

(d) The issue cannot be broadened to embrace matters in which other carriers not parties are interested. Freight Rates from Minnesota Points, 32 I. C. C. 361, 367.

(e) Determination of the general relationship of rates on a given commodity can with propriety be made only on a record where, by complaint, the issue is raised and where all interested carriers are parties. Cement Rates from Points in Illinois, 32 I. C. C. 369, 371.

VII. EFFECT OF EVIDENCE.

§14½. In General.

(a) While parties state in their printed briefs, filed with the Commission, that certain facts have been agreed upon, this does not establish these facts in such manner as would justify the Commission in issuing a formal order thereon, but the parties must join in stipulation agreeing on such facts and file such statement, together with expense bills involved. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 396.

(b) In some cases the testimony of shippers is essential. This is especially true where reparation is to be awarded. However, comparison with rates in nearby territory or elsewhere where the same general conditions exist may often suffice without other showing to indicate that the rates complained of are discriminatory or excessive. Minneapolis Civic & Commerce Assn. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 669.

(c) Where a complainant offers no testimony concerning the rates on a commodity attacked in its complaint, the Commission will not consider such rates. Commercial Club of Joplin Mo., v. M. P. Ry. Co., 32 I. C. C. 226, 227.

§16. Judicial Notice.

See Evidence, III.

(a) In reaching a decision which cannot be limited in application to the claim in controversy, but must necessarily affect all rail carriers, the Commission may refer to the evidence of record in other cases bearing upon the general question in dispute. Miller v. C. L. R. R. Co., 29 I. C. C. 526, 528.

§19½. Unreported Opinions.

(a) Unreported opinions of the Commission are as carefully considered and have the same binding effect and force as reported opinions. Fish & Solomon v. P. R. R. Co., Unrep. Op. A473.

VIII. DEFENSES AND EVIDENCE.

See Special Contracts, §6; Undercharges, §3.

§20. In General.

(a) Defense of error can be availed of only where the circumstances are so clear and convincing as to leave no possible doubt of the fact. Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 29.

§21. Immunity.

(a) The Commission proceeds on the theory that it is better to expose wrongdoing, even if in doing so it would be necessary to use a few witnesses whose testimony might bring them immunity, than through fear of bestowing immunity on some, leave facts unknown and uncovered and thereby give immunity to all, not only as to prosecution, but as to stigma of exposure as well. Financial Investigation of N. Y. N. H. & H. R. R. R. Co., 31 I. C. C. 32, 68.

(b) The purpose of the immunity statute was to aid in the search for facts by removing the obstacle of witnesses refusing to testify on the ground of self-incrimination. Financial Investigation of N. Y. N. H. & H. R. R. R. Co., 31 I. C. C. 32, 68.

PROPORTIONAL RATES.

I. APPLICATION.
II. DISCRIMINATION.
III. LEGALITY.
IV. UNREASONABLENESS AND EVIDENCE.
V. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
VI. TARIFFS AND PUBLICATION.

CROSS REFERENCES

See Advanced Rates, §2½ (a), §17 (b); (f); Basing Points and Lines, §2 (l); Electric Lines, IV (a); Equalization of Rates, §3 (gg); Evidence, §13 (5), §14 (5), (l), §43 (c); Export Rates and Facilities, §2 (a); Long and Short Hauls, §12 (2), (b), §13 (j); Reasonableness of Rates, §2 (l); Reparation, §8 (u), (gg), (hh), §16 (5i); Through Routes and Joint Rates, §13 (d), (r), §13½ (b), (c), (o), (m), §14 (d), §18 (g), §24 (a),)c).

I. APPLICATION.

See Basing Points and Lines, §1 (d).

(a) Proportional rates of initial lines from all eastern points to the river are applied without regard to destination of traffic beyond river, but delivering carriers west of river vary their proportional according to point at which traffic originates. Interior Iowa Cities Case, 28 I. C. C. 64, 70.

(b) Proportional class rates should be graded back across the state on basis of proportional scale of 55 cents between the rivers. Interior Iowa Cities Case, 28 I. C. C. 64, 75.

(c) On through traffic to a given interior point, the proportional rate from the river crossing is usually higher than local rate from the river to that point. Interior Iowa Cities Case, 28 I. C. C. 64, 69.

(d) A proportional rate is a part or remainder of a through rate, and as such must be taken in its relation to the whole rate. Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 387.

(e) Although a proportional rate applying on through traffic might well be less than the corresponding local rate, it does not follow that such proportional rate must be, or in every case should be, less. Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 388.

(f) A proportional rate is from its very nature nothing else but a part of a through rate. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 651.

(g) Petition seeks the establishment of proportional rates to be applied to shipments billed locally to La Tuna and El Paso, at which points new bills of lading will be taken out calling for the transportation to destination in Texas under rates not filed with this Commission. The Commission cannot enter such an order. Mesilla Valley Produce Exchange, Inc., v. A. T. & S. F. Ry. Co., Unrep. Op. A229.

(h) Proposed rates from Memphis

should be established as proportional rates only, applicable on business originating in territory west of the Mississippi River, and so limited in their application as to prevent increase of discrimination against intermediate points of origin. Rates to North Carolina Points, 29 I. C. C. 550.

(i) Lines from Peoria, Ill., publish proportional rates from their Mississippi River crossings to interior Iowa equal to the amount which the proportional rates exceed the local rate to Chicago, thus equalizing rates via these routes and enabling carrier which has not a direct line to participate in the traffic. Proportional Rates on Coal, 30 I. C. C. 465.

(j) A proportional rate is part or remainder of a through rate, and as such must be considered in relation to the whole rate. Export Rates on Grain and Grain Products, 31 I. C. C. 616, 619.

(k) A proportional rate means a part of or a remainder of the through rate. Board of Trade of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C. 2987, 307.

(l) Proportional rates of direct line Kansas City to Memphis, have been met by circuitous routes. Board of Trade of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C. 297, 313.

II. DISCRIMINATION.

(a) Protestants complained of the proposed withdrawal of proportional rates on grain and grain products on shipments from interior milling points in southern Illinois and southeastern Missouri to Texarkana, Ark., and the application of joint flat rates exceeding the proportional rates by approximately 7c per 10 lbs., as unreasonable and discriminatory. From East St. Louis and Cairo, Ill., to Texarkana the existing rates were 20c and 18c, respectively, per 100 lbs. Only one of the respondent roads granted transit privileges on business to Texarkana. This road permitted milling at points intermediate between East St. Louis and Texarkana with one extra charge, and mills not intermediate had access to any markets or grain-producing points beyond them on a basis of through rates from the latter points. If proportional rates from interior milling points were withdrawn, the milling-in-transit privilege would still be available, though on a basis of increased rates to both the intermediate mills and those not intermediate, except that on grain from East St. Louis milled at an intermediate station, the benefit of the 20c rate would be obtainable. HELD, following the holding in Proportional Rates on Grain Products to Texas, 27 I. C. C. 282, that the proposed cancellation of proportional rates would give decided advantage to mills at St. Louis and other rate-breaking points, and that the Texarkana adjustment being substantially like that to Texas points, a different action from that taken in the former case was not warranted. Cancellation of proposed schedule directed. Rates on Grain and Grain Products to Texarkana, Ark., 29 I. C. C. 35.

(b) Proportional rate that exceeds local rate between same points not unlawful in and of itself. Interior Iowa Cities Case, 28 I. C. C. 64, 73.

(c) Withdrawal of proportional rates from upper Mississippi River crossings while leaving them in effect from lower crossings not justified. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 554.

(d) The principle that where joint or proportional rates are made by all carriers leading to certain points of destination, it is proper to end a discrimination as between points of origin by a reduction in the rate from a certain point that was subject to discrimination, has application only where the traffic from both groups of origin is necessarily transported to destinations by the same connecting carrier or carriers, and where it is possible for the delivering carriers to put an end to the discrimination by the exercise of their power to refuse to enter into preferential joint or proportional rates. Memphis Freight Bureau v. B. & O. Ry. Co., 28 I. C. C. 543, 548.

(e) The Commission considered the proposed cancellation of a proportional rate of $2.10 per net ton on bituminous coal from Ohio to upper Mississippi River crossings, on coal destined to points west thereof. The usual basis of rates from Ohio fields is combination on Chicago, Ill., or St. Louis, Mo. The local rate to the latter, $2.10, is applied as a proportional on traffic destined to points west of the river. The local rate from the mines to Chicago is $1.65. Lines from Peoria, Ill., publish proportionals from their Mississippi River crossings to interior Iowa 45c below the locals from Chicago. The local from Ohio mines to Peoria is $1.85 per ton, and rates from Peoria and Chicago to Iowa

points on the M. & St. L. are the same, hence the combination on the former is 20c higher than the latter, and the effect of the suspended tariff would be to divert through Chicago such coal as now moves through Peoria. HELD, that the carriers have not justified the proposed cancellation of the proportional rate. Proportional Rates on Coal from Ohio Coal Fields to Mississippi River Crossings, 30 I. C. C. 465.

(f) The Commission considered the proposed cancellation of proportional rates on lumber and other forest products from Thebes, Ill., to points in Southwestern Illinois on the C. B. & Q. R. R. effective via the St. L. I. M. & S. Ry. to Herrin, Ill., and the C. B. & Q. R. R. beyond. The rates were established when temporary physical connection, since removed, existed between the rails of the two carriers at Herrin. There was still available another equally desirable route from Thebes, via the C. & E. I. and C. B. & Q. R. Rs. But increases of from 0.3 to 0.4c in the local rates of the C. & E. I. R. R. to nine of the stations involved were proposed; and while it was not proposed to increase the C. & E. I. R. R. proportional rates between the points involved, these applied only on shipments from points on the S. L. & S. F. Ry. and its connections, and not from points on the M. P. and St. L. I. M. & S. R. Rs., and their connections. HELD, that the proposed cancellation is justified, and order of suspension vacated. But rates charged shippers from points on the M. P. and St. L. I. M. & S. R. Rs. should be maintained on the same relative basis as rates charged shippers located on the St. L. & S. F. Ry. Lumber Rates from Thebes, Ill., 31 I. C. C. 15.

(g) From Chicago, Milwaukee and Indianapolis territory rates to Tennessee and southeastern points were made by combining proportionals to Ohio River crossings, while to Kentucky points rates were constructed by using the local rates to and from the crossings. Local rates from Louisville to Bowling Green, Ky., having been, by virtue of the original order in this case, reduced to the level of the Nashville rates, the through rates to Bowling Green, which was intermediate to Nashville, were left 5c, 4c, 3c, 2c, 2c and 2c higher than to Nashville. The distance to Nashville from Milwaukee and Chicago via Louisville is in each case approximately 115 per cent of the distance via Evansville: from Indianapolis, however, the short line is via Louisville. HELD, that the carriers might continue the proportional rates from Chicago and Milwaukee territories to Louisville on business to Nashville and local rates on business to Bowling Green; but that through rates from Indianapolis territory via Louisville to Bowling Green should not exceed concurrent rates to Nashville. Bowling Green Business Men's Asso. v. L. & N. R. R. Co., 31 I. C. C. 1.

(h) Withdrawal of proportional rates via circuitous line may be justified. Rates on Grain and Grain Products, 30 I. C. C. 16, 17.

(i) Complainant attacked proportional rates of 14c per 100 lbs. of the St. L. & S. F. Ry. on grain and grain products from Kansas City, Mo., to Memphis, Tenn., as unreasonable per se and unjustly discriminatory as compared with rates 1c higher from Omaha, Neb., to Memphis, Tenn. The attack upon the Kansas City-Memphis rates is the key to the situation. The grain rates to the southeast from the territory west of the Mississippi River and from much of the territory north of the Ohio River are made on combinations of rates to and from the Ohio River crossings or Memphis. The rates from the lower Ohio River crossings (Cairo, Paducah and Evansville), are a fixed differential over the rates from Memphis to the southeast and the rates from St. Louis are a fixed differential over the rates from these crossings. Consequently, the rates from the various grain producing centers of the middle West to Memphis and the Ohio River crossings directly affect their ability to compete for business in the Southeast. The proportional rates under attack apply to grain originating outside of Kansas City, regardless of the specific point of origin. These rates and the rates from Omaha to Memphis, with distances, are as follows: Kansas City to Memphis, 484 miles; wheat and products, 14c; coarse grain and products, 13c; Omaha to Memphis, 678 miles, wheat and products 15c; coarse grain and products, 14c. The short line from Omaha to Memphis is through Kansas City. More wheat is raised in Kansas than in Nebraska, and naturally more wheat would gravitate to Kansas City than to Omaha. In the sale of wheat and its products to the Southeast, Kansas City is able to compete with Omaha. Corn and other coarse grain, however, come from southern Nebraska and northern Kansas very largely. Of the grain shipped to Memphis and

through Memphis to the Southeast corn predominates, and since complainant's chief interest is in the corn rate, comparisons to be made, so far as they bear upon the question of discrimination, relate to corn. Proportional rates on wheat and corn from Kansas City to Memphis have varied from 10c both in 1896 to the present rates, these being the highest rates, and 9c, effective for a short time in 1898, being the lowest. On corn in 1904 the rates were 14c and 13c. In 1904 they were as low as 10c and 9c, respectively. During the greater part of the period, 1896 to 1903, inclusive, the proportional rate on corn from Kansas City to Memphis was 10c, while the only rates published from Omaha were local rates of 17c and 18c. The rates themselves do not reflect actual conditions prior to 1904; shipments moved from both points at rates other than the published tariff. Prior to 1904 Omaha was not a great grain market. As a result of action by the C. G. W. Ry., a rate war was precipitated, which resulted in an adjustment being arrived at in June of that year, whereby the rates on all grain from Omaha, Kansas City and other Missouri River points to all Mississippi River points, St. Louis to Dubuque, inclusive, were made the same. These have since been maintained upon the same relative basis. As a result of this adjustment, the rates from Kansas City to Minneapolis, a haul 145 miles longer than from Omaha to Memphis, were fixed at 1c over the Omaha rates, and rates Omaha to Memphis were fixed 1c over the Kansas City rates. Per ton-mile earnings of rates from Kansas City to Chicago, Chicago to Memphis, St. Louis to Memphis and Kansas City to Minneapolis, are somewhat under the Kansas City-Memphis rate per-ton-per-mile. The lowest per ton-mile yield is that for corn, St. Louis to Memphis, 3.9 mills. If this were applied to the distance via the St. L. & S. F. Ry. from Kansas City to Memphis, it would give a rate of 10.8c, but the St. Louis-Memphis rate was water-compelled. Rates from Omaha to Arkansas, Oklahoma and Texas points were from 3c to 5½c higher than the rates from Kansas City, although as is the case Omaha to Memphis, the short-line haul is through Kansas City. It is urged that a difference of 5½c, which is the amount of the proportional rate Omaha to Kansas City, would be a proper differential in the rate to Memphis. In Omaha Grain Exchange vs. C. R. I. & P. Ry. Co., 28 I. C. C. 680, the Commission refused to fix a uniform differential basis, Omaha over Kansas City to all Oklahoma stations. The specific rates, which were from 3c to 5½c higher from Omaha than from Kansas City, were found to be not unreasonable. Complainant also attacked the Kansas City to Memphis rates as unjustly preferential, compared with rates from Omaha to Memphis. In late years the price of corn at Kansas City has been from 3c to 5c per bushel higher than at Omaha; hence. with the present rate differential, amounting to only .56c per bushel, it is impossible for the Kansas City dealer to compete with Omaha. There had been a falling off in the movement from Kansas City, as compared with that from Omaha and other points. But in this connection the growth of the Omaha business has taken place largely since 1904. Prior to that time Omaha did not have rates to any consuming market that would enable it to compete for the business. Also with respect to wheat and flour, Kansas City has held its own. It is only with respect to corn that Omaha seems to have an advantage. Variable proportional rates were in effect via the St. L. & S. F. Ry. and Mo. Pac. Ry. from Kansas City to Memphis, ranging from 8.6c to 15c on wheat and 7.65c to 13.83c on corn, dependent upon the point of origin, these proportional rates being constructed to enable grain to move from the fields of Kansas and Nebraska to Memphis and beyond at total freight charge no higher than the through rate via either Kansas City or Omaha. By the means of these rates the Kansas City dealer can move grain to Kansas City and afterward send it to Memphis at a freight charge not greater than would be paid by the Omaha dealer from the same points of origin. The carriers called attention to the Commission's opinion in Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 16 I. C. C. 195. That case was brought by the present complainant and attacked the adjustment here under consideration. Outside of the testimony as to alleged unreasonableness per se, no new facts or changed conditions were referred to by complainants to justify a different conclusion from that reached in the former case. It appeared the inbound rates from representative points in Nebraska were relatively lower to Kansas City than to Omaha for equal distances. From a consideration of the map and the various individual rates, it would appear that when the total rates from the grain fields to Memphis via Kansas City and via

Omaha are considered, the former is not at an undue disadvantage, and this is more apparent when the variable proportionals from Kansas City to Memphis are taken into consideration. From a statement submitted on behalf of the C. B. & Q. R. R., showing the amount of grain received at Kansas City from stations on its line, as compared with that received at Omaha, indicates that Kansas City is receiving a large share of the grain raised west of the Missouri River. Although Omaha is situated in the center of the large corn-growing districts of Iowa, South Dakota and Nebraska, it was shown that from 1910 to 1913, inclusive, shipments from Omaha to Memphis and points in the Mississippi Valley basing on Memphis constituted but 3.4 per cent of the total Omaha shipments. From the testimony it would appear that only a small portion of the grain coming to Memphis comes from Kansas City and Omaha. It also appeared there had been a steady increase in the production of corn in the states of Illinois and Iowa, which are closer to the destination territory herein involved than either Kansas City or Omaha. With a decline in corn production in the Southwest and a rapid growth of population in that section, there has arisen a demand for Kansas City corn, which diverts the movement from the East. This, to some extent, explained the change of Kansas City's selling market from the Southeast to the Southwest. Even St. Louis has been shipping corn to the Southwest. In the last year or two Kansas City has been buying corn and oats from southeastern Iowa and even as far east as Illinois, to supply this southwestern demand. When the crop conditions become normal and the trend of the movement of Kansas and Nebraska corn is again to the southeast, the price of corn at Kansas City will adjust itself, so as to be lower at Kansas City than St. Louis, by the amount of the transportation charge for Kansas City to St. Louis, and in such event Kansas City will be able to compete under existing rates upon an equal footing not only with St. Louis, but also with Omaha. There is a necessary relation between rates from both Omaha and Kansas City to the Atlantic ports on grain for export, and export rates to the gulf are based on established differentials under the through rates to the North Atlantic ports, etc. A reduction in the Kansas City-Memphis rates probably would be reflected in reductions in the rates to all Mississippi Valley points south of Jackson, Miss. This would result in the Kansas City corn dominating the New Orleans and Mississippi Valley markets, to the exclusion of Illinois corn, to which Memphis now has access in supplying the demands of that section. It appeared on behalf of Cincinnati, Louisville and Nashville that the grain dealers located at these points depend upon the southeastern market for a large part of their trade, and that any change in the existing adjustment would be a detriment to the grain dealers at these points. The proportional rates of the St. L. & S. F. Ry., the direct line from Kansas City to Memphis, have been met by the more circuitous routes. Some of these routes would not be able to compete for the business at lower rates. Some of these routes have milling-in-transit arrangements at points on their lines and these mills would be damaged to the extent of their inability to use Kansas City grain when needed. The local rates from Kansas City to Memphis are 18c on wheat and 17c on corn. In some cases the rates from the intermediate points are as high as the local rates from Kansas City, gradually grading downward as the distance decreases. If the proportional rates are reduced to any extent, a revision of the rates from the intermediate stations would be necessary. These rates have heretofore been found reasonable. Reductions in the Kansas City-Memphis rates would also entail a revision in the rates from Wichita and other points in Southern Kansas and Oklahoma, since Kansas City now enjoys a material advantage over these points. HELD, the changes asked for would affect not merely the grain traffic from Kansas City and Omaha, to Memphis and the Southeast, but would also have a bearing upon the traffic from numerous competing points to the destination territory here involved, as well as to other destinations. The present adjustment from the various distributing markets seems to be such that all are able to compete for business to Memphis and the Southeast; and therefore the rates attacked are neither unreasonable per se nor unduly discriminatory. It is not the duty of the Commission to equalize rates as crops change. Board of Trade of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C. 297.

(j) A proportional rate, the use of which is limited to shipments over a par-

ticular line, is unjustly discriminatory. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 391.

(k) In one sense proportional rates are but divisions of through rates. But it would be an unjust discrimination if a carrier should demand, for the same movement over its line, higher divisions of joint rates between the same points of origin and destination when the traffic is routed via one than when it is routed via another connecting carrier. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 391.

(l) By withholding proportional rates from traffic handled in connection with a boat line, while according them on traffic handled in connection with a rail carrier operating between the same points as the boat line, a railroad unduly discriminates against the boat line and shippers who may choose to avail themselves of the water-and-rail route. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 390.

(m) Complainant attacked the action of railroads north of the Ohio River in restricting the application of their proportional rates to and from the river crossings to traffic routed over their southern rail connections as unjustly discriminating against it and shippers desiring to route their goods via its boat line between Chattanooga, Tenn., and Joppa, Brookport and Metropolis, Ill. Local rates were applied on traffic moving via rail and water. Proportional rates 1st class between Chicago and Ohio River crossings, compelled by competition were 35c southbound and 40c northbound; local rates to or from Joppa and Metropolis; Brookfort and Cairo, Ill., and Evansville and Jeffersonville, Ind., and Cincinnati, Ohio, were 49.8, 48.9, and 42c. Boat rates between Paducah, Ky., and Chattanooga on traffic originating north of the Ohio River were 34, 30, 26, 21, 16, and 13c on the numbered classes; and rail rates were 70, 60, 53, 44, 38, and 29c. HELD, that, by restricting their proportional rates to traffic routed over these southern rail connections, defendants were unjustly discriminating against complainant and shippers desiring to route goods over its boat line; but that, independent of considerations of discrimination under section 6 the proportional rates should be prescribed as maximum rates on traffic so routed, with the single reservation that the rail carriers might exact an additional charge to cover additional expense of interchange with the boat line; if any, over the expense of the all-rail movement. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384.

III. LEGALITY.

See Tariffs, §14.

(a) Proportional rates that exceeds local rate between same points, or those that vary with point of origin are not unlawful in and of themselves. Interior Iowa Cities Case, 28 I. C. C. 64, 73.

(b) A proportional rate is in essence a division of a through rate. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 29 I. C. C. 28, 29.

(c) It is not per se unlawful to make a proportional rate lower than the local rate and limit the application of that proportional to traffic coming from a specified territory. Columbus Iron Works Co. v. V. S. & P. Ry. C., Unrep. Op. A547.

(d) The Commission considered the proposal of the K. C. S. Ry. to establish proportional rates, ranging from 13.6c to 18c on wheat and from 12.1c to 17.72c on corn, from Kansas City, Mo., to Port Arthur, Tex., for export, applicable to traffic originating at certain points in northeastern Kansas and southern Nebraska points. The existing proportional rates were 18½c on wheat and products and 17½c on corn and products, regardless of point of origin. The K. C. S. Ry. had the short line to Port Arthur, 789 miles, but served no other port. It did not reach the points of origin, which were reached, however, by other lines which accorded through rates from such points through Kansas City to Galveston and New Orleans, less than respondent's existing rates to Port Arthur. Some of the proposed rates from Nebraska points were in violation of the fourth section. For instance, the rate from Pickrell, an intermediate point, would be 28.42c for 219 miles, as compared with rates of 27.57c, 26.72c and 25.03c from Cortland, Wahoo and Valley, for distances of 228, 289 and 308 miles, respectively. HELD, that the proposed proportional rates to Port Arthur were not unlawful because they varied in amount dependent on the point of origin, provided the violations of the fourth section were eliminated. Export Rates on Grain and Grain Products, 31 I. C. C. 617, 618.

(e) Through rates on corn from points in Illinois made by combination of local rates to, and proportional rates from, East St. Louis, Ill., to Little Rock and other Arkansas points, lower than local rates to same destinations from points in Illinois intermediate to East St. Louis, should be corrected by restriction of proportional rate. Nanson Commission Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-926.

IV. UNREASONABLENESS AND EVIDENCE.

See Advanced Rates, §17 (p); Evidence, §13 (5), §19 (c); §13 (1), (a).

(a) The Commission considered the proposed withdrawal by the St. L. I. M. & S. Ry. and connections of proportional rates on grain and grain products from interior milling points in Southern Illinois and Southeastern Missouri to Texarkana, Ark., and the substitution of joint flat rates 7c higher. In Proportional Rates on Grain Products to Texas, 27 I. C. C. 282, carriers sought to cancel proportional rates to destinations in Texas from practically the same milling points. From East St. Louis and Cairo, Ill., respectively, to Texarkana the rates on both wheat and flour were 20 and 18c, and the joint flat rates which would in some instances apply on withdrawal of proportional rates would exceed the sum of the intermediates. Of the milling points, 13 were on the St. L. I. M. & S. Ry., 11 on the I. C. Ry., 3 on the I. S. Ry. and 2 each on the W. C. & W. and the C. P. & S. G. Rys. The St. L. I. M. & S. Ry. was the only one granting at these milling points transit privileges on business to Texarkana. This road permitted mills intermediate to East St. Louis and Texarkana to draw grain from East St. Louis, mill and reship on the proportional rate of 20c; while mills not intermediate had access to any markets or grain-producing points beyond them on basis of through rates from such markets or points. If proportional rates were withdrawn milling-in-transit privileges would be available only on a basis of increased transportation charges, except that in case of East St. Louis grain milled at intermediate points the 20c proportional would continue. HELD, that the situation is substantially similar to that presented in the case cited, in which proportional rates were ordered to be re-established. No reasons having been advanced warranting different action in this case, cancellation of the suspended schedule is directed. Rates on Grain and Grain Products to Texarkana, Ark., 28 I. C. C. 35.

(b) A proportional rate as a factor in through charges may be found unreasonable. Interior Iowa Cities Case, 28 I. C. C. 64, 74.

(bb) A proportional rate, applying on through traffic might well be less than the corresponding local rate, but it does not follow that such proportional rate must be, or in every case should be, less. Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 388.

(c) Complainant attacked the proportional rates of the C. R. I. & P. Ry., averaging 22.1c, yielding a per-ton-mile average of 7.05 mills applicable as reshipping rates upon traffic received by rail, on coarse grain and wheat shipped from Omaha, Neb., to certain junction points in Oklahoma, for a mean distance of 583 miles, as unreasonable and discriminatory compared with average rates of 17.3c, yielding a ton-mile average revenue of 8.31 mills, from Kansas City to the same destinations, for a mean distance of 416 miles, and demanded the establishment of a differential, Omaha over Kansas City, of 3c per 100 lbs. on coarse grain and 1c higher on wheat. The distance via the Rock Island lines from Omaha to Kansas City is 333 miles and via the C. B. & Q. R. R. 194 miles. The rate via both lines was 5½c. The short line from Omaha to Oklahoma points on the M. K. & T. Ry., the St. L. & S. F. R. R. and the A. T. & S. F. Ry. is through Kansas City. As illustrative of the rates charged the following may be taken:

From Omaha to—	Rock Island distance, miles.	Proportional corn rates, cents.	Rate per ton-mile, mills.
Medford	443	16½	7.44
McAlester	682	20½	6.00
Ardmore	810	23½	5.80
Waurika	632	24	7.59
Mangum	665	25	7.51
Watonga	535	21½	8.00

In 12 I. C. C. 351, the Commission prescribed on shipments from Wichita, Kans., to Texas Group 1 and Group 3 points rates of 27 and 31c, yielding revenues per ton-mile of 11.5 and 9.7 mills, for average distances of 468 and 640 miles. Existing Omaha to Oklahoma points local rates, yielded per-ton-mile earnings of from 6 to 8.4 mills for dis-

tances of from 700 to 568 miles; while local rates from Kansas City to Oklahoma yielded from 6.2 to 10.7 mills for distances of from 540 to 317 miles. Defendant was not the rate-making line from either Omaha or Kansas City. Its hauls from Omaha were longer than, and in some cases nearly double, those of the short lines. To Texas and part of Louisiana defendant and other carriers maintained from Omaha proportional rates 5½c higher than the rates from Kansas City and though the differential was less in the case of grain moving to Arkansas and Tennessee, this was the result of special competitive influences. The rates of the Rock Island from Omaha served to place it on a substantial parity with the St. L. & S. F. R. R. and other lines to common points in Oklahoma. It also appeared that intermediate markets on the Rock Island lines had for years done business in Oklahoma on differentials ranging from 1 to 5½c. Omaha and Kansas City are served by a number of carriers engaged in traffic to Oklahoma, none of which were made defendants. HELD, that as such carriers were not before the Commission, which was not placed in possession of requisite information as to the relative extent, character and value of the services rendered by them in handling this grain, no opinion can be expressed as to the desirability of or justification for a fixed differential basis of Omaha over Kansas City. Rates held not unreasonable nor discriminatory. Complaint dismissed. Omaha Grain Exchange v. R. I. & P. Ry. Co., 28 I. C. C. 680, 4.

(d) The great disparity in the ton-mile earnings up to Thebes under the proportional rate from Morehouse as compared with the proportional rate from Cape Girardeau, and between such proportional rates and the rates from Thebes to Evansville does not appear to be justified. Reduction ordered. Von Behren Mfg. Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A173.

(e) Proportional rates should not be compared with local rates in determining a violation of section 4. Rates on Grain and Grain Products to Texarkana, 29 I. C. C. 35.

(f) On traffic from Reeves Junction, Mich., to Jacksonville, Fla., the water carriers' separately established proportion from Baltimore, Md., to destination found unreasonable. Isbell-Brown Co. v. M. C. R. R. Co., Unrep. Op. A425.

(g) A proportional rate is part or remainder of a through rate, and as such must be considered in relation to the whole rate. Export Rates on Grain and Grain Products, 31 I. C. C. 617, 619.

(h) The Commission considered the proposed cancellation of the proportional carload rate of 16c, minimum 20,000 lbs., and less-than-carload rate of 26c, on agricultural implements from Stockton, Cal., to Portland, and East Portland, Oreg., when destined to points beyond; leaving effective 27c, c. l., minimum 24,000 lbs., and 30c, l. c. l. This would have resulted in through rates of 66, 77, and 91c to Pendleton, Oreg., Spokane, Wash., and Burke, Idaho, for distances of 956, 1159, and 1189 miles. These rates were lower than class A rates in the same territory. HELD, that respondents had justified the proposed cancellations. Order of Suspension vacated. Rates on Agricultural Implements from San Francisco, 33 I. C. C. 119.

(i) A proportional rate is ordinarily less than the local rate. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 632.

(j) Proportional rates of $5 per car on tile, hollow brick, etc., from Wilson to Kerper, Ohio, not found unreasonable. Proportional Commodity Rates between Kerper and Wilson, Ohio, Unrep. Op. A-893.

(k) Cancellation of proportional rate on grain and products from points in Iowa, Minnesota and South Dakota to Missouri River, leaving higher local in effect, justified. Rates on Grain and Grain Products from St. Paul, Minn., and Other Points to Stations in Kansas, Nebraska and Other States, Unrep. Op. A-938.

(l) The Commission entertained a number of complaints attacking (a) proportional rates between Des Moines and the Mississippi River on shipments originating at or destined to points east of the Indiana-Illinois state line, and (b) commodity rates between Des Moines and Chicago. In State of Iowa v. C. St. P. M. & O. Ry., 28 I. C. C., 76, carriers were required to grade the 80c scale of class rates from Chicago to the Missouri River back across the state to the 37 1-2 and 41.7c scales at the Mississippi crossings. But the distance scale was ignor-

ed in applying commodity rates. For instance, the rate on bottles was 27c at Omaha, and 13.1c at Davenport, and 21 1-2c at Des Moines—though, if properly graded it would have been 20c. Class and commodity rates on other commodities were as follows:

	Class	Omaha	DesMoines	Davenport
Agricultural Implements	A	$0.30	$0.25	$0.15
Asphalt	D	.115	.12	.074
Cement, Roofing, or Paving	D	.125	.12	.074
Paint, Mixed	5	.27	.235	.147
Paper, Roofing and Lining	5	.16	.135	.089
Paper Print		.20	.18	.11

HELD (1) that the rates between Des Moines and Chicago on agricultural implements, asphalt, cement, bottles, mixed paints, and paper articles being in need of correction, a conference between the parties in interest was advisable. DES MOINES PROPORTIONAL RATES: Subsequent to filing of complaints relative thereto, the carriers had, in compliance with decisions, in interior Iowa Cities case, 28 I. C. C. 64, readjusted the entire proportional rate structure. HELD complaint dismissed and reparation denied. CREOSOTE OIL: Complainant attacked the less-than-carload of 36c per 100 lbs. from Chicago and related points to Des Moines. This third-class rate did not exceed the combination of fourth class rates prescribed by the Iowa and Illinois state classifications to and from the Mississippi River. HELD that there was no need of further action. Complaint dismissed. CHERRY LUMBER: Complainant attacked the less-than-carload rates on cherry lumber from Chicago to Des Moines. Under the western classification this commodity was rated second class, being placed with "foreign woods of value;" while under official, southern, and Iowa and Illinois state classifications it was rated fourth class. HELD that the rates on cherry lumber should not exceed the fourth class rate. Reparation denied. PAPER AND PAPER ARTICLES: Rates considered in connection with principal complaint. Complaint dismissed and reparation denied. IRON AND STEEL ARTICLES: Pending the hearing the rate from Chicago to Des Moines was, under Rates on Iron and Steel Articles, 30 I. C. C. 337, fixed at 17 1-2c. Complaint dismissed. BOTTLES: As to the rate from Chicago to Des Moines, see the first division of this note. Complainants attacked the commodity rate of 18 1-2c from St. Louis and Alton to Des Moines as unreasonable. The class fifth rate was 19½c. HELD that there was no necessity for lower rates from St. Louis and Alton to Des Moines. Directed that complaint be held open pending result of conference alluded to in second division of this note. LEATHER: Complainant attacked the first class rate on glove leather from Chicago to Des Moines as unreasonable. Harness leather was rated second class, a rating also applied to glove leather in all classification territories except western. HELD that the rate on glove leather should not exceed second class. Reparation denied BROOM HANDLES: The establishment of a rate of 24 1-2c from Chicago to Des Moines was asked; but pending the hearing the rate had been reduced to 24c. Complaint dismissed. Des Moines Commodity Rates, 34 I. C. C. 281.

V. CONTROL AND REGULATION.

See Control and Regulation.

(1) Jurisdiction of Commission.

See Bills of Lading, §1 (a).

(a) Authority to reduce the unreasonable through rate by reducing the excessive proportional rate is beyond question. Malt Rates to New Orleans, La., 30 I. C. C. 587, 590, 591.

PUBLIC INTEREST

See Advanced Rates, §2½ (p); Blanket Rates, §4; Evidence, §44½.

PULLMAN COMPANY

See Sleeping Car Companies.

QUARANTINE REGULATIONS

Cars and Car Supply, §32¼.

RAIL-AND-WATER TRANSPORTATION

See Bills of Lading, §3; Equalization of Rates, §4 (3); Evidence, §14 (4).

RAILROAD COMPETITION

See Discrimination, §8 (3); Evidence, §14 (3); Long and Short Hauls, §9; Reasonableness of Rates, §8 (2); Through Routes and Joint Rates, §6.

RATE-BREAKING POINT

Basing Points and Lines, §1 (ss), §2 (hh), §3 (f); Discrimination, §11½ (a).

RATE WAR

See Advanced Rates, §5 (4), (h); Alaska, (a).

REASONABLE RATES

See Absorption of Charges, IV; Advanced Rates, §18½ (a), IV, §17 (a); Act to Regulate Commerce, II (d); Allowances, V; Any Quantity Rates, I; Basing Points and Lines, III; Blanket Rates, §11 (e), §11 §12, §17 (b), IV; Branch Lines, I; Bridge Tolls, I; Class Rates, II; Classification, §17, V; Commodity Rates, §2 (y), III; Demurrage, §10½; Differentials, IV; Discrimination, §3 (ee); Distance Rates, II; Divisions, §4 (c), V; Equalization of Rates, §3 (ff), (oo), (vv), (xx), §4 (1), (a), (b); Evidence, §14 (1), (dd), §47 (g), (h); Export Rates and Facilities, V; Express Companies, §10, IV; Import Traffic, II; Interstate Commerce Commission, §8½ (e), V; Lighterage, §3, II; Long and Short Hauls, §4½ (b), §5 (b), (y), §7 (b), §12 (1), (c); Minimums, §7; Passenger Fares and Facilities, II; Precooling, V; Procedure Before Commission, §1 (a), (e); Proportional Rates, IV; Reconsignment, III; Refrigeration, III; Released Rates, IV; Reparation, §7½ (d), §8½ (t); Storage, §2, II; Switch Tracks and Switching, §4 (u); Telephone and Telegraph Companies, II; Terminal Facilities, §5; Through Routes and Joint Rates, IV, §15½ (b); Track Storage, II; Weights and Weighing, VII.

REASONABLENESS OF RATES.

§1. In general.
§1½. Procedure in general.

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§2. In general.
§3. Actions of state commissions.
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§7¼. Combination of rates.
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(2) Railroad competition.
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§13. Equipment furnished.
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§15. Investment of carrier.
§15½. Loading.
§16. Long-continued adjustment.
§17. Manufactured product.
§18. Mineral lands owned by carrier.
§18½. Motive of carrier.
§19. Natural advantages.
§20. Need for revenue.
§21. Obsolescence.
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§23. Ownership or use of commodity.
§24. Paper rate.
§25. Past rates.
§26. Permanent improvements.
§26½. Prior adjudication.
§27. Profits of shipper.
§27½. Rate via competing line.
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§28. Relativity of the rate.
§29. Reproduction value of road.
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§31. Special service.
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§32½. Subsequent reduction.
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§34. Terminal facilities.
§35. Time of changing rate.
§36. Ton-mile revenue.
§37. Two-line haul.
§38. Value of commodity.
§39. Value of service.
§40. Volume of traffic.
§41. Weight.
III. REASONABLE RATES.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

(a) The law authorizing the Commission, in dealing with the amount of a rate, aside from any question of discrimination, limits its authority to the fixing of that which is the maximum reasonable rate for the service to be performed. The Commission has no power to substitute a proposed new rate for an existing just and reasonable one on the ground that in its judgment it would be wise policy to do so. N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215.

(b) The burden lies on complainant to show that existing rates attacked are unjust and unreasonable. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 642.

§1½. Procedure in General.

See Procedure Before Commission, §2 (q).

II. ELEMENTS DETERMINING REASONABLENESS.

See Evidence.

§2. In General.

(a) Large revenues from other traffic afford no reason for prescribing less than reasonable rates on pulpwood. Curry & Whyte Co. v. D. I. & R. R. Co., 30 I. C. C. 1, 6.

(b) Carriers, shippers, and the public generally are entitled to just and reasonable freight rates. By this standard alone is the issue as whether increased rates are just and reasonable to be determined. Rates on Crushed Stone, 30 I. C. C. 22, 28.

(c) The reasonableness of a rate must be determined irrespective of the contractual obligations of a particular shipper. Straw Rates from Stations in Missouri to Alton, Ill., 29 I. C. C. 562, 563.

(cc) If, when viewed in the light of those considerations which enter into proper rate making, a particular rate is fair and just for the service performed, the price at which the shipper markets his product cannot be accepted as the controlling factor in fixing the rate. Oklahoma-Colorado Potato Rates, 28 I. C. C., 298, 300.

(d) Low rates usually mean inferior service. Mississippi River Case, 28 I. C. C. 47, 57.

(e) Carriers are entitled to a reasonable compensation for the services they render, yet this compensation might require rates upon which shippers could not do business at a profit, and the Commission could not lawfully prescribe rates unremunerative to the carrier. Railroad Commissioners of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635.

(f) While the fact that traffic moves freely has some bearing upon the reasonableness of the rates, it is not true that merely because traffic does not move the rates are therefore unreasonable. Railroad Commissioners of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635.

(g) A common carrier has an undoubted right under the Act to publish, in the manner and form provided by law, any reasonable rate on any commodity between points on its own line, regardless of the objections of carriers which lead from other points. Molasses Rates from Mobile, Ala., 28 I. C. C. 666, 669.

(h) Rate of 84c per 100 lbs. on washing machines from El Reno, Okla., to Denver, Colo., not found unreasonable. Morey Mercantile Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A156.

(i) Proportion of through rates on alfalfa hay from Texas points to El Paso, for points in Louisiana not found unreasonable. Mesilla Valley Produce Exchange, Inc. v. A. T. & S. F. Ry. Co., Unrep. Op. A229.

(j) Rates on burlap bags from San Francisco, Cal., to Montrose, Colo., and Carbondale, Colo., to Salt Lake City, Utah, found unreasonable. Boyle Commission Co. v. W. P. Ry. Co., Unrep. Op. A327.

(k) It is not proper to adopt a course which will put an extra burden upon shippers while a controversy is being fought out between carriers. Switching at Arcade, N. Y., 30 I. C. C., 501, 504.

(l) Regardless of whether a jobbing situation is controlled by outbound rates from jobbing points, there is no justification for depriving any locality of just and reasonable inbound rates. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515.

(m) A rate must be reasonable for the service rendered. It must not be unreasonably high or so low as to be noncompensatory or impose a burden upon other traffic. Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 15.

(n) The scheme of the Railway Act recognizes that, subject to the inhibitions as to discrimination, it is proper to have elasticity of rate-making. It is recognized that the initial making of rates is in the hands of the transportation agency, and that the board's function is concerned with the questions of unreasonableness and of discrimination. (Can. Ry. Com., 1914.) Complaint of Mrs. Kate S. Massiah. File 23865. British Columbia News Co. v. Express Traffic Association, 13 Can. Ry. Cas. 176.

(o) Fact that jobbing situation is controlled by outbound rates from jobbing points is no justification for depriving any locality of just and reasonable inbound rates. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515.

(p) Rates must not only be reasonable, they must be free from unwarranted discriminations. Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

(q) The existence of a lower rate via another route cannot operate to deprive a shipper of the right to a reasonable rate via the route over which it chooses to forward its traffic. Aetna Powder Co. v. Wabash R. R. Co., Unrep. Op. A-681.

(r) Each community is entitled to reasonable rates, by whatever name known, and carriers may not by means of special adjustments establish restricted trade zones. Commercial Club of Joplin v. M. P. Ry. Co., 32 I. C. C. 226, 232.

(s) Complainant who concedes the reasonableness of existing rates on a commodity in the customary package is barred from alleging that when an equivalent weight in a smaller package is carried for the same weight, he is paying a higher compensation than the shipper of the ordinary package for a less valuable service. Am. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

(t) Commercial advantages and disadvantages are not factors that can have any great consideration by the Commission in reaching conclusions as to the propriety or the rate structures under which such commodities move. The Illinois Coal Cases, 32 I. C. C. 659, 673.

(u) The fact that two communities may be one, from a commercial point of view, does not necessarily make them one for transportation and rate-making purposes. The Illinois Coal Cases, 32 I. C. C. 659, 680.

(v) Act requires carriers to show affirmatively reasonableness of proposed advanced rates. Five Per Cent Case, 31 I. C. C. 351, 425.

(w) Carriers owe to the public an efficient service at reasonable rates. Five Per Cent Case, 31 I. C. C. 351, 359.

(x) Transportation conditions not conclusive in determining the reasonableness of rates. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 651; Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545.

(y) Crop shortage in Mississippi, lengths of hauls, character of commodity, volume of movement, etc., warrant a finding of unreasonableness of rates on cotton seed from certain Alabama points to Jackson, Miss. Reparation awarded. Jackson Oil & Refining Co v. S. R. Ry. Co. Unrep. Op. A-763.

(z) A reasonable ore rate is one that takes into account both the lean years and the fat years. Lum v. G. N. Ry., 33 I. C. C. 541, 555.

(aa) Each community is entitled to reasonable rates by whatever name known. Commercial Club of Joplin, Mo. v. M. P. Ry. Co., 32 I. C. C. 226, 232.

(bb) The duty to prove that a certain rate is reasonable per se includes the duty to prove that it is relatively reasonable. Transcontinental Commodity Rates, 32 I. C. C. 449, 452.

(cc) A contention that a general reduction in the oil rates to a certain state will not benefit the consumers in that state because the oil producers will simply advance the price of oil at the wells to absorb the reduction in freight charges is not sound defense of the reasonableness of rates attacked. Pacific Creamery Co. v. S. P. Co., 34 I. C. C. 586, 590.

§6. Car-Mile or Train-Mile Revenue.

See Evidence, §8.

(a) Car-mile revenues have an important bearing upon the reasonableness of rates. Rates on Crushed Stone, 30 I. C. C. 22, 27.

(b) Car earnings considered in determining reasonableness of rate. Lumber Rates from Southwest Points North 29 I. C. C. 1, 13; Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 22; Emigrant Movables to South Dakota, 29 I. C. C. 40, 41; Maier & Co. v. S. P. Co., 29 I. C. C. 103, 105; Pacific Creamery Co. v. S. P. Co., 29 I. C. C. 405, 406; Duluth Log Rates, 29 I. C. C. 420, 421; Straw Rates from Stations in Missouri, 29 I. C. C. 562, 564; Lumber Rates from Local Points to Chattanooga, 29 I. C. C. 646, 648.

(c) It does not follow that merely because the per-car-mile earnings on complainant's products when shipped to points of destination involved are higher than the average of per-car-mile earnings on all traffic of defendant's lines, that rates complained of are unreasonable. Ontario Iron Ore Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 566, 569.

(d) Train-mile earnings considered in determining reasonableness of rate. Duluth Log Rates, 29 I. C. C. 420, 421; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 433.

(e) Car-mile earnings have an important bearing upon the reasonableness of rates. Rates on Crushed Stone, 30 I. C. C. 22, 27.

(f) It cannot be found that merely because per-car-mile earnings on complainants' product are higher than average per-car-mile earnings on all traffic of defendant's lines that the rates are unreasonable. Ontario Iron Ore Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 566, 569.

§7. Changed Circumstances.

See Evidence, §9.

(a) The statute itself, in giving to the rate orders of the Commission a life of only two years, recognizes that conditions which determine reasonableness are subject to change. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 558.

(b) Statute, in giving rate orders a life of only two years, recognizes that conditions which determine reasonableness are subject to change. Class and Commodity Rates to Salt Lake City, 32 I. C. C. 551, 558.

§7¼. Combinations of Rates.

(a) Combination rate on corn from Remsen via Sioux City to Council Bluffs, Ia., destined to Kansas City, not found unreasonable, though it exceeded the state rate between Remsen and Council Bluffs. Reparation denied. Flanley Grain Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-638.

(b) Combination of rates on lumber from various points of origin to Sutton, Glenfield and Juanita, N. D., a factor of which was a state rate established between Page, N. D., and these points, not found unreasonable. Crane-Johnson Co. v. G. N. Ry. Co., Unrep. Op. A-640.

§7½. Comparisons.

See Comparitive Rates.

(a) Class rates between Iowa interior points and Chicago are unreasonable and unduly discriminatory in comparison with rates to river towns on either side of the state. Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co., 28 I. C. C. 76.

(b) Rates on many commodities when moving to Colorado common points are unduly discriminatory in comparison with rates applied on same commodities

when moving to Salt Lake City. Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co., 28 I. C. C. 82, 90.

(c) One of the ways of showing unreasonableness under Section 1 is by proving that rates are unduly high as compared with rates to other places similarly situated. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 164.

(d) Rates to point upon edge of territorial group not fairly comparable with other rates. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 195.

(e) Domestic rates are generally much higher than export rates. Erickson Co. v. C. M. & St. P. Ry. Co., 29 I. C. C. 414, 415.

(f) Domestic rates higher than import rates have been disapproved by Commission. Rates on Potash and Other Commodities, 29 I. C. C. 626, 628.

(g) Conditions differ in different classification territories, and the rates in one territory are no measure of controlling importance in determining the reasonableness of rates in another territory on the same kind of traffic. Oliver v. O. G. & N. E. Ry. Co., Unrep. Op. A496.

(h) For the purpose of determining the reasonableness of an interstate rate, a rate established by a state is no more to be presumed reasonable than one voluntarily established by a carrier. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 708.

(i) Rates established in one section of the country furnish no reliable standard by which to measure the reasonableness of rates in another section where dissimilar conditions prevail. Wichita Business Asso. v. A. T. & S. F. Ry. Co., 30 I. C. C. 45, 50.

(j) Rate on canned hominy from Kansas, Ill., to Muskogee, Okla., not found unreasonable as compared with other points in Chicago territory. Muskogee Wholesale Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-577.

(k) Commission has repeatedly held that rates of carriers in Trunk Line and C. F. A. territories do not constitute a measure of the reasonableness of rates maintained by southern lines. Montague Mailing Machinery Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-626.

(l) Rates on green-salted hides from Seattle, Wash., not found unreasonable as compared with rates from other Pacific coast terminals and western points. Norton Co. v. N. P. Ry. Co., Unrep. Op. A-637.

(m) Rates on box shooks via the Y. & M. V. R. R. and connections not found unreasonable as compared with rates from Vicksburg, Miss., to points in other directions. Anderson-Tully Co. v. A. & V. Ry. Co., Unrep. Op. A-643.

(n) Comparisons may be resorted to, of course, as evidence of unreasonable rates, but to be effective their elements must have, as a common basis, similarity of conditions. A rate may be reasonable and yet higher than another rate for substantially the same service, for example, where the traffic density varies greatly. Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 659.

(o) Canadian eastbound rates cannot be cited to impeach the reasonableness of Montana grain rates, since (1) the former are set by the carriers in consequence of arrangements with the government of Manitoba, involving bond interest guarantees and tax exemptions, (2) Canadian grain enters the American market only under the disability of a 10c duty per bushel, and (3) westbound Canadian grain rates are higher than westbound Montana rates. In view of these considerations the Canadian rates cannot be used as a fair measure of the reasonableness of Montana rates. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 650.

(p) Joint through passenger fares between Atlanta, Ga., and Chattanooga and Nashville, Tenn., justified by showing that their reasonableness should not be measured by sums of the intermediate fares because of low rates established by state commission, and transportation conditions. U. S. v. N. C. & St. L. Ry. Co., Unrep. Op. A-691.

(q) The Commission may not condemn rates as unreasonable upon mere rate comparisons pointed out from tariffs on file. Owensboro Wagon Co. v. S. Ry. Co., Unrep. Op. A-714.

(r) Comparison of California rates with rates from Oregon and Washington, not sufficient to show that refrigeration rates were excessive. California Fruit Growers' Asso. v. A. G. S. R. R. Co., 32 I. C. C. 51, 52.

(s) Commission does not think that rates which were experimental can be set up as standards by which to test the reasonableness of the 5 1-2 cent rate on ex-lake export wheat. New York Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 216.

(t) Voluntary application of intrastate rate to point beyond the state to equalize rates through different gateways not a measure of reasonableness of rates to points differently situated. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268.

(u) Intrastate rate applied to point beyond the state not measure of reasonableness of rates to points differently situated. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268.

(v) State-made rates may be considered in determining the reasonableness of interstate rates in same general territory. Freight Rates from Minnesota Points, 32 I. C. C. 361, 363.

(w) Fact that rates for switching in Baltimore were fixed by the state Commission after full hearing, and sustained by the state courts, is entitled to weight in determining the reasonableness of the same rates as applied to interstate traffic. Baltimore Switching Charges, 32 I. C. C. 376, 379.

(x) It cannot be concluded that a rate is unreasonable solely because one of the carriers participating therein receives an apparently excessive division of the rate. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625.

(y) If the charge assessed for a transportation service be something greater than a reasonable compensation for the services rendered, in consideration of all the circumstances surrounding the particular transportation, such excess charge is unreasonable, no matter who may benefit by reason of such reduction. The reasonableness of a transportation charge may be judged in part from a comparison with the revenue derived by the carriers involved from the transportation of other commodities under similar circumstances and conditions. Pacific Creamery Co. v. S. P. Co., 34 I. C. C. 586.

(z) When rate comparisons are offered in evidence in substantiation of a claim of unreasonableness, they should be accompanied by such testimony as is possible showing the transportation circumstances and conditions incident to the rates compared; such evidence is forceful until impeached by other evidence showing that the rate comparisons are not comparable. Rate comparisons may thus be discredited in a number of ways, among others by showing that the transportation conditions prevailing in the two territories from which the rates are compared are different; that competitive conditions by rail are different; that water or rail competition intervenes as a factor; and in many other ways. Lehigh Portland Cement Co. v. B. & O. S. W. R. R., 35 I. C. C. 20.

§8. Competition.

See Competition.

§8. (1) In General.

(a) The extent to which a carrier shall lower its rate to meet anticipated competition is a matter primarily for its decision, and should it later raise the rate, the sole question for determination is whether that increased rate is just and reasonable for the service performed. Scrap-Iron Rates Between Duluth and Chicago, 28 I. C. C. 467, 470.

(b) Where rates are not established as just and reasonable rates, but rather under the compulsion of competitive conditions, it is no justification to a proposed increase in rates that even as increased they are still unduly low. Grain Rates in Central Freight Assn. Territory, 28 I. C. C. 549, 557.

(c) Where it is shown that a given competition was not abnormal, and it appears that the rates which resulted from it were maintained after it disappeared and are still maintained, the rates thus established are apparently only the normal results of normal competition and therefore are presumably reasonable. Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. 188, 190.

(d) Rail-and-water rates should be lower than all-rail rates. Bowling Green Protective Asso. v. E. & B. G. Packet Co., 31 I. C. C. 301, 307.

(e) Contention that dealers in scrap iron at Sioux City and Sioux Falls are in competition with dealers at St. Paul, and Minneapolis, not sufficient to establish unreasonableness of rates from former points to Chicago, Ill. Livingston Bros. v. C. M. & St. P. R. Ry. Co., Unrep. Op. A-729.

(f) Competitive rates used comparisons do not necessarily establish that non-competitive rates are unreasonable. Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co., Unrep. Op. A-748.

(g) A presumption of unreasonableness does not necessarily attach to a rate between given points merely because there is a lower rate over other lines between the same points. Maley & Wertz v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-811.

§8. (2) Railroad Competition.

See Evidence, §14 (3); Railroad Competition.

(a) Railroad competition is an element to be considered in the fixing of a reasonable rate. Iowa Grain Rates, 28 I. C. C. 354, 355; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555, 556; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 577, 581; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 204, 208, 230, 279, 304; Memphis Freight Bureau v. I. C. R. R. Co., 30 I. C. C. 471, 475; Fourth Section Violations on Sugar, 31 I. C. C. 511, 522; Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op. A-798.

(aa) A shipper's commercial needs can not ordinarily be made the basis of a finding that a rate is unreasonable, and a carrier may, so long as it does not unjustly discriminate as between shippers or localities, determine for itself the extent to which competition of other lines will be recognized in the conduct of its own business. Doran & Co. v. N. C. & St. L. Ry., 33 I. C C. 523, 530.

§8. (4) Water Competition.

See Water Competition.

(a) Higher rates in effect from Meridian to various points between York and Calvert than from Mobile justified by water competition. Meridian Board of Trade & Cotton Exchange v. A. G. S. R. R. Co., 28 I. C. C. 360, 361.

§8¾. Congestion.

See Facilities and Privileges, §12½ (a).

(a) Fact that stations are congested no justification for imposition of unreasonable charges. Switching at Baltimore, Md., 30 I. C. C. 581, 583.

§9. Cost of Service and Operation.

See Evidence, §17, §18.

(a) Cost of service is an element to be considered in the fixing of a reasonable rate. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 200; Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232; Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287; Elgin Commercial Club v. B. & M. R. R., 28 I. C. C. 380, 381; Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 536; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 553, 554; National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 674; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 602; Decker & Sons v. C. N. & St. P. Ry. Co., 30 I. C. C. 547, 548; Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I. C. C. 671, 678; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678; IN re Separation of Operating Expenses, 30 I. C. C. 676, 678; American Refining Co. v. St. L. & S. F. R. R. Co., 30 I. C. C. 103, 104; New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 441; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508; Chamber of Commerce of Washington v. B. & O. R. R. Co., 30 I. C. C. 446, 447; Judd & Detweiler, Inc. v. B. & O. R. R. Co., 30 I. C. C. 455, 457; Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 602; Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 30 I. C. C. 615, 618; Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548; Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 555; Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 22; Five Per Cent Case, 31 I. C. C. 351, 380; Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 658; Weatherford Chamber of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 666; National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 691, 695; Kenner Truck Farmers' Asso. v. I. C. R. R. Co., 32 I. C. C. 1, 9; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 466; Class and Commodity Rates to Salt Lake City, 32 I. C. C. 551, 555; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 622; Proportional Commodity Rates Be-

tween Kerper and Wilson, Ohio, Unrep. Op. A-893.

(aa) A rate that is reasonable for the team-track and siding service is clearly less than reasonable when it includes much more costly service. Industrial Railways Case, 29 I. C. C. 212, 236.

(b) Cost figures that are mere approximations are not reliable factors upon which to determine the reasonableness of rates. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 432.

(c) The Commission has consistently pursued the policy of giving consideration to cost in establishing rates. What weight to be given the factor depends on the particular case. In re Separation of Operating Expenses, 30 I. C. C. 676, 678.

(d) While cost is an important element in determining the reasonableness of freight rates, it is not controlling, nor is a reasonable maximum rate ipso facto only such a rate as pays a fixed distributive share of all operating expenses. So long as freight is classified this cannot be and the preservation of that classification calls for the exercise of "the flexible limit of judgment which belongs to the power to fix rates." Coal Rates from Virginia Mines, 30 I. C. C. 635, 646.

(e) Rates on lumber from Alcolu, S. C., to Chapel Hill, N. C., higher than rates in effect to Winston-Salem and Greensboro, N. C., length of haul substantially same. HELD, not unreasonable owing to extra expense of movement to Chapel Hill. Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548.

(f) Rates on lumber from Goardman, N. C., to Spartanburg, S. C., higher than rates in effect from Whitesville, Lake Waccamaw and Freeman, N. C., to Spartanburg, substantially similar distances. HELD, not unreasonable owing to greater cost of movement from Boardman. Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548.

(g) In determining the reasonableness another. Pulp & Paper Mfrs. Traffic of rates, cost of service is one of several factors to be considered, and, while carriers are not entitled to receive more than a reasonable rate on any traffic, in cases where it appears that the rate challenged is in harmony with a general adjustment between a large number of producing regions and an extensive consuming territory consideration must be given not only to the accuracy of cost estimates, but to the probable effect of a substantial reduction on the main body of rates. Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414, 420.

§10. Distance.

See Distance Rates; Evidence, §20.

(a) The distance of the haul is an element to be considered in the fixing of a reasonable rate. Mississippi River Case, 28 I. C. C. 47, 50; Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 162; Montezuma v. C. of G. Ry. Co. 28 I. C. C. 280, 282; Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 388; Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 475, 476; Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C. 511, 512; Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C. 511, 513; U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 522; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 558; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 580; Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-154; Dodd v. T. & P. Ry. Co., Unrep. Op. A-223; In re Separation of Operating Expenses, 30 I. C. C. 676, 681; Metropolis Commercial Club v. I. C. R. R. Co., 30 I. C. C. 40, 43; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 178; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 163; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 178; California-Colorado Lumber Rates, 30 I. C. C. 461, 463; Brownsville, Tex., Class and Commodity Rates, 30 I. C. C. 479, 485; Lumber Rates to Knoxville, Tenn., 30 I. C. C. 524, 526; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 580; Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 143; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 269; Commercial Club of Joplin v. M. P. Ry., 32 I. C. C. 226, 232; Northbound Rates on Hardwood, 32 I. C. C. 521, 529; Coffeyville Merc. Co. v. M. K. & T. Ry., 33 I. C. C. 122, 124; Grain Rates from Milwaukee, 33 I. C. C. 417, 424; R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 37; Fourth Section Violations in the Southeast, 32 I. C. C. 61, 63; Commercial Club of Joplin, Mo. v. M. P. Ry. Co., 32 I. C. C. 226, 232; Commercial Club of Joplin, Mo. v. M. P. Ry. Co., 32 I. C. C. 226, 232; St. Matthews Produce Ex-

change v. L. & N. R. R. Co., 32 I. C. C. 233, 236; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 269; Columbia Chamber of Commerce v. S. Ry. Co., 32 I. C. C. 504, 505; Fox River Valley Mfrs. Asso. v. M. C. R. R. Co., 32 I. C. C. 547, 549; Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 555; Rates on Clay from Points in Georgia, 32 I. C. C. 564, 567; Rates on Clay from Points in Georgia, 32 I. C. C. 564, 567; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 631; Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896; Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896; Valley Planing Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906; Schreiber Hay & Grain Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-946.

(aa) Ordinarily in the making of rates carriers must consider, among other things, distances and natural advantages. But this does not mean that they must or should so adjust rates as to give all shippers engaged in the same business equal access to markets or to prevent free access to the fields where raw materials are produced on part of others than those located in or immediately adjacent to such fields, and the Commission recognizes no exclusive right to supply consuming markets or to serve the fields of production. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 628

(b) While it is true that mileage comparisons do not always reflect the real traffic and commercial conditions, yet distance is an import even though not controlling factor in determining reasonableness of rates. Rates on Matches to Oklahoma Stations, Unrep. Op. A-843.

§10½. Divisions.

See Divisions.

(a) Division of rates not forceful evidence of unreasonableness of rate. Charges being reasonable, division of rate between carriers is not usually of special interest to public, though in some cases divisions may have controlling significance. Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502.

§11. Earnings.

See Infra, §36; Evidence, §5.

(a) The Commission investigated the rates, practices, rules and regulations governing the transportation of iron ore from Minnesota points of origin. In 1913 the Vermillion, Mesabi, and Cuyuna ranges in Minnesota produced 1536; 36,379, and 744 long tons of ore respectively; as compared with 3978, 4997 and 4744 tons produced by the Marquette, Menominee, and Gogebic ranger in Wisconsin. Tonnage from the Minnesota ranges averaged about 27,500 tons per annum. The rate from these Minnesota ranges to Two Harbors and Duluth, Minn., and to Allouez Bay and Superior, Wis., was uniformly 60c per long ton. The weighted average haul was 84.53 miles. For the five-year periods ending in 1912, 1913, and 1914, respectively, the total operating expenses, taxes and capital charges at 7 per cent were 56.96, 54.88, and 54.26c on the D. & I. R. R. R., and 43.15, 42.42, and 46.70c on the D. M. & N. Ry.; while the profits which the G. N. Ry. derived from the traffic were equally large. The amount of switching, dock storage and extra trackage required by the independent shippers increased the cost of carrying independent ore slightly over the ore shipped by the Oliver Mining Co., controlled by the U. S. Steel Corporation, which also indirectly controlled two of the roads. From 1885 to 1913, the D. & I. R. R. R. paid 10 per cent annually in addition to improvements made out of earnings, with a surplus of over $19,000,000; on the D. M. & N. Ry. from 1893 to 1912, the net income was $30,000,000 in excess of what was necessary to pay 10 per cent on every dollar of property investment. At the existing rate of production the visible supply of ore would last over 50 years. Ton-mile earnings were as follows:

	Average Haul	Earnings per gross ton-mile	Earnings per net ton-mile
Duluth and Iron Range	Miles	Mills	Mills
Mesabi Range	67.07	8.946	7.987
Vermillion range	89.32	6.717	5.997
Duluth, Mesabi & Northern	77.43	7.749	6.919
Great Northern	108.23	5.544	4.950
Average	84.53	7.098	6.338

HELD, that the existing rate of 60c on iron ore from points on the Mesabi range to Two Harbors, Duluth, Allouez, and Superior was unreasonable, and should not exceed 55c for the future. No finding made with respect to rates from mines on the Vermillion and Cuyuna ranges. Lum. v. G. N. Ry., 33 I. C. C., 541.

§12½. Equalizing Commercial Conditions.

See Equalization of Rates, §6.

(a) Commercial and transportation conditions must not be confused, and the conditions of the market as to any specific commodity is not to be considered the controlling element. Oklahoma-Colorada Potato Rates, 28 I. C. C. 298, 300.

(b) Fact that Commission compelled carrier to establish rates for comparatively shorter haul same as rates via longer route no reason for denying justice of establishing equal rates when distances are substantially equal. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576.

(c) Rates on lumber from Marengo, Milltown, and Corydon Junction, Ind., to Chicago, Ill., not found unreasonable as compared with lower rates from Oakland City and other points more distant, made to meet competition. Collier v. S. Ry. Co., Unrep. Op. A-554.

(d) Rate on nitrate of soda from Long Dock, N. J., to Corning, N. Y., found unreasonable to the extent that it exceeded rate to Buffalo, N. Y., and Bradford, Pa., more distant points. Reparation awarded and reduction ordered. Corning Glass Works v. E. R. R. Co., Unrep. Op. A-571.

(e) Rates on petroleum and products from Coffeyville, Kan., to Hannibal, Mo., found unreasonable to the extent that they exceeded the rates in effect to St. Louis, Mo., and Omaha, Neb., further distant points. National Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-567.

(f) Rate on canned hominy from Kansas, Ill., to Muskogee, Okla., not found unreasonable, as compared with other points in Chicago territory. Muskogee Wholesale Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-577.

(g) Rate on canned tomatoes from West Weber, Utah, to Muskogee, Okla., not found unreasonable as compared with rate from other points in Utah to central Oklahoma points. Reparation denied. Chestnut-Gibbons Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-586.

(h) Rate on logs from Daggett and Aubrey, Ark., to Memphis, Tenn., found unreasonable, as compared with the rate from Lean Junction, Ark., a farther distant point. Reparation awarded. Nickey & Sons Co., Inc., v. M. & N. A. R. R. Co., Unrep. Op. A-600.

(i) Rates under which sewer pipe moved from Chattanooga, Tenn., to Florence, S. C., not found unreasonable, as compared with Macon, Ga., which bears a fixed relationship to Chattanooga. Reparation denied. Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., Unrep. Op. A-676.

(j) The inability of producers to realize profits under depressed market conditions will not of itself suffice to show that the rates are unjust or unreasonable. Nor is the desirability of developing a great wheat growing section in a particular region sufficient to show that rates which preclude such development are necessarily unjust or unreasonable. The national or public aspect of this matter is one of general governmental policy and not one which the law entrusts to the Commission for determination. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641.

(k) The reasonableness or unreasonableness of freight rates cannot be gauged solely by the ability or inability of shippers under depressed prices, to market their products at the existing rates with a reasonable margin of profit. Such a doctrine would lead to the conclusion that the different burdens of production arising from natural disadvantages, distance from market, and other economic difficulties of all communities and industries should be neutralized and absorbed by the carriers which serve them. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 644.

(l) The reasonableness of rates attacked cannot be determined solely by considering the geographical and economic disadvantages under which grain producers are laboring; nor can those disadvantages fairly be said to lessen materially the probative force of comparisons whose value the Commission has repeatedly recognized in determining the reasonableness of rates. Railroad

Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 646.

(m) Whether the growing necessity of raising breadstuffs for the supply of our own people, instead of importing, warrants a reduction of grain rates, is a question of national policy, and one which the Commission can hardly consider in gauging the single question of the reasonableness and justice of existing railroad rates. Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 653.

§14. Investment Relying on Rate.

See Advanced Rates, §13 (b); Evidence, §27.

(a) The fact that a manufacturer has built a plant at a certain point upon assurances from representatives of carriers that a lower rate will be established from points of origin of the required raw material, will not in and of itself afford sufficient ground for finding the existing rate to be unreasonable. Nor would it be material to the inquiry if it were established that such an agreement had been entered into between the parties. Meridian Fertilizer Factory v. L. & N. R. R. Co., 30 I. C. C. 494, 497.

(b) That shippers have invested capital in establishing mills upon an understanding that certain rates were to be maintained does not prevent the carrier from charging a reasonable rate. Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 15.

(c) The reasonableness of rates must be determined irrespective of contractual obligations of a particular shipper. Straw Rates from Stations in Missouri, 29 I. C. C. 562, 563.

(d) Where the investment in railways serving a territory is of a temporary character, the rates applied for the transportation of persons and property over such lines are not necessarily unreasonable, although higher than the rates for like distances in other parts of the country. Goldfield Cases, 34 I. C. C. 360, 373.

§15½. Loading.

See Loading and Unloading.

(a) That an article loads heavily considered in determining reasonableness of rate. Duluth Log Rates, 29 I. C. C. 420, 422.

(b) Quality of article considered in determining reasonableness of rate. Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 503.

(c) Average weight considered in determining reasonableness of rate. Straw Rates from Points in Missouri, 29 I. C. C. 562, 564.

§16. Long-Continued Adjustment.

See Evidence, §29.

(a) The long continuance of a voluntary rate is an element to be considered in the fixing of a reasonable rate. In re Basket Rates from Points East of to Points West of the Missouri River, Unrep. Op. A-490; Lumber Rates, S. Ry. Points to Eastern Points, 31 I. C. C. 244, 253; Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 149; Grain Rates to Pittsburg, 30 I. C. C. 383, 384; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515; Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 706; Freight Rates from Minnesota Points, 32 I. C. C. 361, 364; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 625; Freight Rates from Minnesota Points, 32 I. C. C. 361, 364.

(aa) Time has an undoubted weight and may often be controlling in a relation of rates under which different communities have competed with one another for some years. Mississippi River Case, 28 I. C. C. 47, 54.

(b) Rates established voluntarily can fairly be taken as measure of what carriers consider reasonable. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 252.

(c) Presumption of reasonableness from long maintenance of voluntary rate. Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 24.

(d) A long-maintained rate is presumptively reasonable. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 431.

(e) Complainant assailed the rate charged for transportation of pulpwood in carloads from certain Michigan points to Rhinelander, Wis., as unreasonable and discriminatory. Rates from Trenary, Delta Junction and Manistique, Mich., were 6c, for distances of 152, 166 and 170 miles, calculated on basis of Wisconsin state distance rates, and from Whitedale, Bovee, Christiansen Spur and

Spur No. 447 they were 7.5c for distances of 182, 202, 220 and 230 miles. These rates had been questioned in 26 I. C. C. 104, where the 7.5c rate was condemned, but the 6c rate was sustained. After the first hearing the Wisconsin commission also prescribed rates for distances from 200 to 300 miles, materially lower than the 7.5c rate. Such distance rates had been voluntarily applied by the C. M. & St. P. Ry. and C. & N. W. R. R. on shipments from Michigan, and prior to 1908 defendant had maintained rates on shipments in Wisconsin lower than those subsequently established by the Wisconsin commission. The carriers contended, in accordance with the decision in Pulp & Paper Mfrs. Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, that the rates complained of should be constructed on the basis of distance rates from points of origin to the Menominee River, plus the Wisconsin scale thence to Rhinelander. This would yield rates ranging from 5.91c to 7.11c from the mentioned points of origin. HELD, that the fact that other lines had adopted the Wisconsin scale on shipments from Michigan points was not conclusive that defendant's rates were unreasonable nor discriminatory, nor was the fact that defendant had voluntarily maintained lower rates before 1908. Conclusions reached in the original report sustained. Complaint dismissed. Rhinelander Paper Co. v. M. St. P. & S. Ste. M. Ry., 31 I. C. C. 555.

(f) The long maintenance of a given rate is an admission of the reasonableness of that rate. Where, upon the strength of a given rate, capital has been invested and industrial conditions have become established, the rate cannot be discontinued without taking into account its effect upon these commercial and industrial conditions, but there is no absolute rule requiring for any reason the absolute continuance of such a rate. It is always a question of what, under all the circumstances, is just and reasonable. Coal Rates from Virginia Mines, 30 I. C. C. 635, 642.

(g) For the purpose of determining the reasonableness of an interstate rate, a rate established by a state is no more to be presumed reasonable than one voluntarily established by a carrier. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 708.

(h) Fact that the continuance of a rate will tend to disrupt a rate adjustment is not sufficient reason for approving a rate which has been found unreasonable. Rates on Boots and Shoes from Boston, Mass., 31 I. C. C. 154, 158.

(i) If long maintenance of rates raises presumption of reasonableness which is given weight in opposition to proposed increases by carriers it must also be forceful in considering reductions. Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 625.

(j) If the long maintenance of rates raises a presumption of reasonableness which is to be given weight in opposition to proposed increases by the carriers it must also be forceful in considering reductions. Nor will the Commission require carriers to modity an existing arrangement of rates long in effect and apparently fairly adapted to the needs of the communities and interests affected, except upon substantial proof of its unreasonableness or of unjustifiable injury resulting therefrom. Eastern Fruit Growers' Asso. v. B. & O. R. R. 33 I. C. C., 343, 354.

§17. Manufacutred Product.

See Evidence, §31.

§18½. Motive of Carrier.

See Evidence, §34½.

(a) The intent or motive actuating carriers in the establishment of rates cannot outweigh other considerations when determining the present reasonableness of such rates. But if it is sought to make use of a long existing basis of rates for the purpose of effecting reductions in other rates, it may be of special importance that consideration be given to the circumstances connected with the origination and continuance of the lower basis, in order to determine whether or not that basis is compensatory or reasonable and may properly be employed for testing purposes. Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 164.

§19. Natural Advantages.

See Evidence, §2.

(a) The Natural Advantage of location to which a shipping point is entitled is an element to be considered in the fixing of a reasonable rate. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 480; Transcontinental Rates from Group F, 28 I. C. C. 1, 4; Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 168; Lebanon Commercial

Club v. L. & N. R. R. Co., 28 I. C. C. 301, 303; Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433, 437; Mayor and Council of Douglas v. A. B. & A. R. R. Co., 28 I. C. C. 445, 450; Traffic Assn. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 486; Springfield Commercial Assn. v. P. R. R. Co., 28 I. C. C. 511, 514; Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547; Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I. C. C. 594, 596; Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-233; Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-233; Rates to North Carolina Points, 29 I. C. C. 550, 557; Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458, 461; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 601; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 601; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., Unrep. Op. A-676; Merchants' & Manufacturers' Asso. of Birmingham v. L. & N. R. R. Co., Unrep. Op. A-680; Nebraska State Railway Comm. v. C. V. Ry. Co., 32 I. C. C. 41, 46; Inman, Alters & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 147; Chamber of Commerce, Houston, Tex. v. I. G. N. Ry. Co., 32 I. C. C. 247, 251; Trans-Continental Commodity Rates, 32 I. C. C. 449, 455; Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582, 587; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 632; Illinois Coal Cases, 32 I. C. C. 659, 673, 674; Illinois Coal Cases, 32 I. C. C. 659, 667.

(aa) The fact that shippers located on the line of another railroad only a short distance from complainant's mills can ship to a certain point at a lower rate than that accorded complainant on defendant's line does not prove discrimination on defendant's part, but goes rather, by way of comparison, to the question of the reasonableness of defendant's rate. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 695.

(b) It is not within the province of carriers to dictate where manufacturing shall or shall not be done, or by means of their rate adjustments or otherwise to select or control the markets where their shippers shall buy or sell. Every shipper is entitled to a reasonable rate; but if the nature or value of a commodity offered for transportation is such as to demand an unreasonably low rate, there is no lawful obligation upon the carrier to meet this demand. Boise Lumber Co. v. P. & I. N. Ry. 33 I. C. C., 109, 115.

§22. Origin of Traffic.

See Origin of Traffic.

(a) A carrier should not be permitted to retain to itself the lumber market at points on its line for the benefit of producing points on its line, to the exclusion of producing points on other lines. Lumber rates Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 474.

§24. Paper Rate.

See Paper Rates.

(a) While the fact that traffic moves freely has some bearing upon the reasonableness of the rates, it is not true that merely because traffic does not move the rates are therefore unreasonable. Railroad Commissioners of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635.

(b) The 13c rate on wheat and corn from Kansas City to Tahlequah, Okla., and other destinations, appears to be a mere paper rate and Commission does not regard it as fixing the measure of reasonableness for rates from points in complaining territory. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., Unrep. Op. A-728.

(c) 25-cent rate on potatoes from Coweta, Okla., to Condurant and Orilla, Iowa, was a mere paper rate and cannot fairly be used as the measure of reasonableness of the rate to Des Moines. Fox v. C. G. W. R. R. Co., Unrep. Op. A-800.

§25. Past Rates.

See Evidence, §29; Passenger Fares and Facilities, §7.

(a) The Commission cannot measure the past reasonableness of rates established more than 25 years before the date of the hearing. Northbound Rates on Hardwood, 32 I. C. C. 521, 525.

(b) Commission can not measure the reasonableness of rates which southwestern lines established in the eighties. Northbound Rates on Hardwood, 32 I. C. C., 521, 525.

§26½. Prior Adjudication.

See Evidence, §43½, V; Reparation, §8½.

(a) A rate which has been prescribed

by the Commission must be regarded as reasonable. Crowdus Bros. v. A. T. & S. F. Ry. Co., 32 I. C. C. 355, 359.

(b) No former ruling can justify a refusal of reasonable rates. American Round Bale Press Co., v. A. T. & S. F. Ry. Co. 32, I. C. C., 458, 463.

(c) The Commission cannot measure the past reasonableness of rates established more than 25 years before the date of hearing. Northbound Rates on Hardwood, 32 I. C. C. 521, 525.

§27. Profits of Shipper.

See Evidence, §16, §45, §62.

(a) While the fact that traffic moves freely has some bearing on the reasonableness of rates, it is not true that merely because the traffic does not move, the rates are therefore unreasonable. Carriers are entitled to a reasonable compensation for the services they render; yet this compensation might require the establishment of rates upon which shippers could do business at a profit, and in such a case the Commission could not lawfully prescribe rates unremunerative to the carrier. Railroad Commissioners of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635.

(b) Reasonableness of rates cannot be determined solely by considering geographical and economic disadvantages. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 646.

(c) Inability of producers to realize profits under depressed market conditions will not of itself suffice to show that rates are unreasonable. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 642, 644.

§27½. Rate via Competing Line.

See Evidence, §30, §47.

(a) The rate via a competing carrier is an element to be considered in the fixing of a reasonable rate. Lindsay & Co., Ltd., v. C. M. & St. P. Ry. Co., Unrep. Op. A-219; Lindsay Bros. v. C. B. & Q. R. R. Co., Unrep. Op. A-230; Vehicle Supply Co. v. L. Ry. & N. Co., Unrep. Op. A-252; Matthiessen & Hegeler Zinc Co. v. C. & N. W. Ry. Co., Unrep. Op. A-273; Stewart v. M. K. & T. Ry. Co., Unrep. Op. A-297; Hedden-Clark Lumber Co. v. B. & O. R. R. Co., Unrep. Op. A-301; West Co. v. I. & G. N. R. R. Co., Unrep. Op. A-317; Steinhardt & Co. v. T. & P. Ry. Co., Unrep. Op. A-325; Lagomarcino-Grupe Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-352; Templeton & Sons v. C. I. & S. R. R. Co., Unrep. Op. A-362; Standard Oil Co. v. P. Co. Unrep. Op. A-485; Helmers Mfg. Co. v. C. R. I. & P. Ry. Co. Unrep. Op. A-542; Brittain v. N. C. & St. L. Ry. Co., Unrep. Op. A-581; Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-601; Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 648; Norcross-West Marble Co. v. Rutland R. R. Co., Unrep. Op. A-713; North American Smelting Co. v. B. & O. R. R. Co., Unrep. Op. A-804; Plymouth Clay Products Co. v. Ft. D. D. M. & S. R. R. Co., Unrep. Op. A-833; Caudle v. U. P. R. R. Co., Unrep. Op. A-870; Woolworth Co. v. Old Dominion S. S. Co., Unrep. Op. A-901; Trostel & Sons Co. v. L. V. R. R. Co., Unrep. Op. A-932; Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955.

(aa) Rates in one direction cannot always be used as tests of the reasonableness of rates in the opposite direction, nor the rates on a specific commodity be measured by the rates on the class to which it belongs. Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C., 14, 19.

(b) The necessity or desirability of developing great national or state forest reserves is not sufficient to establish that rates which do not permit of such development are necessarily unreasonable. Boise Lumber Co. v. P. & I. N. Ry., 33 I. C. C., 109, 115.

(c) Combination rate of 52c on solder from Philadelphia, Pa., to Greenwood, Pa., moving interstate, not found unreasonable. Mere fact that there was a lower rate in effect via another route not sufficient to justify finding of unreasonableness. North American Smelting Co. v. B. & O. R. R. Co., Unrep. Op. A-804.

(d) Charges on lumber from Columbus, Ind., to Evansville, Ind., moving interstate, not found unreasonable. Mere fact that there was a lower rate over other lines between same points does not warrant a presumption of unreasonableness. Maley & Wertz v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-811.

(e) A presumption of unreasonableness does not necessarily attach to a rate between given points merely because there is a lower rate over other lines between same points. Maley &

Wertz v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-811.

(f) That a rate between two given points is higher via one route than via another does not of itself establish that the higher rate is unreasonable. Plymouth Clay Products Co. v. Ft. D. D. M. & S. R. R. Co., Unrep. Op. A-833.

§27¾. Rate in Opposite Direction.

(a) The mere fact that the rate in one direction exceeds the rate between the same points in the other direction is not a controlling test of the reasonableness of the higher rate. Hull Vehicle Co. v. S. Ry. Co., 28 I. C. C. 619, 620.

§28. Relativity of the Rate.

See Advanced Rates, §7 (7), (b); Classification, §17; Procedure Before Commission, §2 (h); Relative Rates,.

(a) One of ways of showing unreasonableness of rates under Section 1 is by proving that rates are unduly high as compared with rates to other places similarly situated. Board of Trade of Carrollton v. C. of Ry. Co., 28 I. C. C. 154, 164.

(b) There can be no possible question but that the interior Iowa town rests under a disadvantage in matter of freight rates as compared with Chicago, St. Louis and Kansas City. Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 196.

(c) Commission recognizes right of Western carriers to maintain higher classification and higher rates than prevail in the East. German Kali Works, Inc. v. A. T. & S. E. Ry. Co., 28 I. C. C. 223, 224.

(d) The carriers have recognized the similarity of the rail locations of Columbia and Augusta to the ports by equalizing the class rates from Baltimore and the East. The same recognition should be given to rates on specific commodities. Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 345, 348.

(e) Relative unreasonableness may sometimes not be proven by mere comparison of distances. Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 388.

(f) Rates on scrap iron from Duluth, St. Paul, and Minneapolis increased to relieve Sioux Falls from a situation apparently unfair. Scrap Iron Rates Between Duluth and Chicago, 28 I. C. C. 467, 468.

(g) Discrepancy between the rates on cement from Mason City and Chicago does not prove that Mason City rate, which otherwise seems reasonable, is unduly low. Iowa-Minnesota Cement Rates, 28 I. C. C. 477, 482.

(hi) The rate charged or gross earnings derived on any basis for the transportation of a given commodity between two points furnishes a guide in arriving at the rate to be charged upon the same or nearly the same commodity between two other points similarly circumstances. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 535.

(j) As a general rule commodity rates to Texas points are a smaller percentage below the corresponding class rates than those to Texarkana and Shreveport. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 581.

(k) Class rates to Texarkana, Ark.-Tex., from St. Louis, Kansas and Memphis should not exceed those maintained to Shreveport. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 571, 580.

(1) Direct lines to Shreveport have depressed their rates to meet combinations through lower Mississippi River crossings. They can not be required to raise their rates in order to place Texarkana upon the same basis as Shreveport. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 581.

(m) Rates via circuitous routes made to meet short-line road to long-distance points do not bear a reasonable relationship to intermediate points. Alton Board of Trade v. C. & A. R. R. Co., 28 I. C. C. 589, 593.

(n) Rates from point on border to Canadian points are distinctly higher than corresponding rates upon the American side. Rates on Soda Ash and other Commodities, 28 I. C. C. 613, 615.

(o) Rates prescribed for the future which do not bear the same relationship one to another as the present rates, but this is due to the fact that the present rates bear no relation one to another Fairmont Creamery Co. v. A. R. & S. F. Ry. Co., 28 I. C. C. 661, 663.

(p) Local rate fabric from interior

Kansas points to Oklahoma points indicate that the local rates from Omaha and Kansas are reasonably aligned. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 684.

(q) Comparison of rates from Wichita to Texas and Omaha and Kansas City to Oklahoma are pertinent because rates prescribed by the Commission from Kansas to Texas apply through Oklahoma over the same roads. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 684.

(r) Lower rate in effect on distillers' dried grain from Louisville, Ky., to Baltimore, Md., for export than from Eminence, Ky., to Baltimore, Md., via Cincinnati, the distance being 14 miles shorter. HELD, not unjustly discriminatory and complaint dismissed. Dewey Bros. Co. v. L. & N. R. R. Co., Unrep. Op. A102.

(s) Rates on walnut stumps from Algood, Tenn., to Baltimore, Md., as compared with lower rates from Nashville, Tenn., to which point Algood is intermediate, not found unreasonable. Williamson Veneer Co. v. T. C. R. R. Co., Unrep. Op. A108.

(t) Rates on tobacco from Paris, Tenn., to New Orleans, La., should not exceed the rate contemporaneously in effect from Murray, Ky., to New Orleans, La. Douthitt & Crosswy Tobacco Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A118.

(u) Rates on alfalfa hay from Western Nebraska to Council Bluffs, Iowa, should not exceed those contemporaneously in effect to Omaha and South Omaha, Nebr. Alfalfa Meal Co. v. C. B. & Q. R. R. Co., Unrep. Op. A127.

(v) Rates on distillers' dried grain, from Cheswick, Pa., to Verbank, N. Y., found unreasonable, in so far as it exceeded a rate contemporaneously in effect from Cheswick, Pa., to Boston, Mass. Reparation awarded and reduction ordered. Dewey Bros. Co. v. P. R. R. Co., Unrep. Op. A130.

(w) It is well known that rates west of the Mississippi River are generally upon a somewhat higher basis than rates east of that river. Commercial Chemical Co. v. C. B. & Q. R. R. Co., Unrep. Op. A149.

(x) Rates on volcanic ash from Ingham, Nebr., to St. Louis, Mo., not found unreasonable as compared with rates on ground silica sand from Ottawa, Ill., to St. Louis, Mo. Commercial Chemical Co. v. C. B. & Q. R. R. Co., Unrep. Op. A149.

(y) Complaint alleged that rates on locomotive and fittings and sawmill machinery from Lima, Ohio, to Lockhart, Ala., were higher than from Lima, to Bristol, N. H., Fargo, N. D., Savannah, Ga., Jacksonville and Pensacola, Fla., Mobile, Ala., and New Orleans, La., all of which are greater distances from Lima than Lockhart. Mere comparisons of rates to points far removed from the particular points with which the comparisons are made are not sufficient to establish rate to given point is unreasonable. Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A154.

(z) There is no justification for the maintenance of a rate on farm wagons from South Bend, Ind., to Cairo, Ill., 420 miles, on traffic from Obion, Tenn., higher than that on similar traffic from Toledo, Ohio, to Cairo, Ill., 513 miles. Obion Hardware Co. v. V. R. R. Co., Unrep. Op. A162.

(aa) Rate for the transportation of imported flaxseed from New York, N. Y., to Toledo, found to be unjustly discriminatory as compared with the rate from New York, N. Y., to Buffalo, N. Y. Reparation denied. Major Co. v. D. L. & W. R. R. Co., Unrep. Op. A165.

(bb) The great disparity in the ton-mile earnings up to Thebes under the proportional rate from Morehouse as compared with the proportional rate from Cape Girardeau, and between such proportional rates and the rates from Thebes to Evansville does not appear to be justified. Reduction ordered. Von Behren Mfg. Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A173.

(cc) Rates on oak and gum lumber from Dermott, Ark., to Kansas City, Mo., not found unreasonable as compared with rates from Arkansas City, Ark. Leavitt Land & Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A174.

(dd) Rates on petroleum and its products from Rouseville, Pa., to Kingston, Ont., found to be unduly prejudicial as compared with rates from Olean, N. Y., to the same point. Crystal Oil Works v. P. R. R. Co., Unrep. Op. A178.

(ee) Rates on petroleum and its product from Coffeyville, Chanute, and Erie, Kans., to Fremont, Nebr., should not exceed rate in effect to Omaha, Nebr. Re-

duction ordered and reparation awarded. Chanute Refining Co. v. M. K. & T. Ry. Co., Unrep. Op. A180.

(ff) Rates on baled hay and straw from Beloit, Wis., to Chicago, Ill., not found unreasonable, as compared with rates from Roscoe, Ill., Afton, Wis., and Rockton, Ill. Bullard v. C. & N. W. Ry. Co., Unrep. Op. A186.

(gg) Minneapolis, Minn., not found entitled to as low a rate on rough stone or marble from Carthage, Mo., as St. Louis, Mo., Peoria and Chicago, Ill., and Milwaukee, Wis. Northwestern Marble & Tile Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A190.

(hh) Evidence offered to support the charge of unreasonableness of rates on lumber from Amelia, Va., to Millington, Md., was a statement of the earnings per ton per mile. While the earnings are slightly over one cent per ton per mile, an examination of the tariffs on lumber from the same section discloses that the rate is not relatively higher than from similar points of origin to the same destination. Homer Lumber Co. v. S. Ry. Co., Unrep. Op. A204.

(ii) Rates on furniture from Shelbyville, Ind., to Fort Smith, Ark., compared with rates to points with equal and greater distances and not found unreasonable. Fort Smith Couch & Bedding Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. A205.

(jj) Higher rate in effect on cottonwood from Annona, Tex., to Springfield, Mo., a less distance than from Shreveport, La., to Kansas City Mo., a greater distance. The points in question are not intermediate via the direct lines or usual routes of movement and was established in order to meet competition. Dodd v. T. & P. Ry. Co., Unrep. Op. A223.

(kk) Rates on beer from La Crosse, Wis., to Chicago, Ill., compared with rates from Milwaukee, Waukesha and St. Louis, and not found unreasonable. Heilman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A233.

(ll) Rates on hay from DeWitt, Ark., to New Albany, Ind., via Thebes, Ill., not found to be unreasonable nor unduly prejudicial as compared with rates from Fort Worth, Tex., to same destinations. Reductions and reparation awarded. El Paso Refining Co. v. R. G. & E. P. R. R. Co., Unrep. Op. A248.

(mm) Rate on news printing paper from Carthage, N. Y., to Memphis, Tenn., not found unreasonable as compared with rates from certain points in New York and Wisconsin. Craig & Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. A260.

(nn) Rates on lumber from Andrews, Ark., to Flat River, Mo., found unreasonable to the extent that it exceeded rate in effect to St. Louis, Mo. Bushnell v. M. & N. A. R. R. Co., Unrep. Op. A288.

(oo) Rates on wheat from Utah and Idaho to Galveston not found unreasonable or unduly discriminatory as compared with rates to New Orleans, La. Smurthwaite Grain & Milling Co. v. O. S. L. R. R. Co., Unrep. Op. A295.

(pp) Rates on apples from McClellands, Colo., to Muskogee and McAlester, Okla., not found unreasonable as compared with rates via competitive routes with greater distances. Stewart v. M. K. & T. Ry. Co., Unrep. Op. A297.

(qq) Rates on lumber from Olive, Tex., to Lewellen, Nebr., found unreasonable and unduly prejudicial as compared with rates to more distant points in Nebraska. Bradford-Kennedy Lumber Co. v. T. & N. O. R. R. Co., Unrep. Op. A307.

(rr) Rates on horses from Waterloo, Iowa, to Lowell, Mass., should not exceed rate in effect to Boston, Mass. Clapp & Co. v. Am. Exp. Co., Unrep. Op. A335.

(ss) The fact that rates to points on the rails of certain carriers in a general territory may upon evidence of record have been approved by the Commission is not conclusive of the reasonableness of rates to other points in the same territory. Colorado Portland Cement Co. v. C. B. & Q. R. R. Co., Unrep. Op. A337.

(tt) Rates to Columbia, S. C., from certain New York points on apples, potatoes, cabbage and onions found unreasonable in that they exceeded rates to Augusta, Ga. Reparation awarded. DuPre Co. v. B. R. & P. Ry. Co., Unrep. Op. A354.

(uu) Rates on beer from St. Louis and Milwaukee to El Paso not found unreasonable as compared with rates to points in Texas common point territory. Ramsey & Co. v. R. G. & E. P. R. R. Co., Unrep. Op. A355.

(vv) Rates on tin cans from Los An-

geles, Cal., to Creamery, Ariz., not found unreasonable as compared with rates from Denver, Colo., to Salt Lake City, Utah. Pacific Creamery Co. v. S. P. Co., Unrep. Op. A356.

(ww) Rates on refiners' syrup from New York, N. Y., Harsimus Cove, N. J., and Philadelphia, Pa., to Chicago, Ill., not found unreasonable as compared with rates to Granite City, Ill., and Davenport, Iowa. Scully Syrup Co. v. P. R. R. Co., Unrep. Op. A360.

(xx) Rates on iron mine cars from Salt Late City, Utah, to Goldfield, Nev., not found unreasonable as compared with rates on same commodity over other lines for same and greater distances. Goldfield Consolidated Mines Co. v. S. P. L. A. & S. L. R. R. Co., Unrep. Op. A379.

(yy) Rates on dry lithage from St. Louis, Mo., to Goldfield, Nev., not found unreasonable as compared with rates on same commodity over other lines. Goldfield Consolidated Mines Co. v. M. P. Ry. Co., Unrep. Op. A381.

(zz) Rate on metal asbestos roofing from Beaver Falls, Pa., to Goldfield, Nev., not found unreasonable as compared with rates over other routes in various parts of the country for same and greater distances. Goldfield Consolidated Mines Co. v. P. Co., Unrep. Op. A386.

(3a) Rates on dressed poultry from St. Louis, Mo., to New York, N. Y., not found unreasonable as compared with rate from Carrollton and other Missouri points. Heger v. A. Exp. Co., Unrep. Op. A397.

(3b) Rates between other points considered in determining reasonableness of rate. Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 23; Oklahoma Traffic Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 129, 131; Pacific Creamery Co. v. S. P. Ry. Co., 29 I. C. C. 405, 408; Arizona Corporation Comm. v. A. & N. M. Ry. Co., 29 I. C. C. 424; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 433; Crowdus Bros. v. A. T. & S. F. Ry. Co., 29 I. C. C. 449, 451; Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 479; Interior Iowa Cities Case, 29 I. C. C. 536, 537; Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co., 29 I. C. C., 539, 541; Colorado Mfrs. Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 544, 546; Norman Lumber Co. v. L. & N. R. R. Co., 29 I C. C. 565, 578; Rates on Potash and Other Commodities, 29 I. C. C. 626, 627; Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I. C. C. 629, 631; Rates on Flaxseed from Minneapolis to Fredonia, 29 I. C. C. 633, 637; Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 687.

(3c) It is entirely proper for the Commission to use the rates found in related cases to be reasonable as a measure of the reasonableness of a proposed rate. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 425.

(3d) Rates on flaxseed from Minneapolis and all other points to consuming markets should bear a consistent relationship to one another. Rates on Flaxseed from Minneapolis to Fredonia, 29 I. C. C. 633.

(3e) In considering what is a reasonable rate for a movement from one coal district, the Commission cannot be expected to take into account the considerations which enter into rates from another district. Hughes Creek Coal Co. v. K. & M. Rv Co., 29 I. C. C. 671, 676.

(3f) Rates from Kansas refining points to twin cities not shown unreasonable as compared with Kansas City, Mo. National Petroleum Assn. v. A. T. & S. F. Ry. Co., Unrep. Op. A410.

(3g) Rates on beans and peas from Twin Falls, Idaho, unreasonable inasmuch as they exceed the rates from other Idaho points. Boyle Commission Co. v. O. S. L. R. R. Co., Unrep. Op. A432.

(3h) The same rate should apply on rails and fastenings from Winona, Kansas City and St. Louis, Mo., to Leesville, La. Gulf Lumber Co. v. St. L. & S. F. R. R. Co. Unrep. Op. A447.

(3i) Salt rates from Kansas to Texas not found unduly prejudicial, as compared with the rates from Louisiana to same points. Western Rock Salt Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A468.

(3j) Rates on lumber from Dallas, Ore. to Weed, Cal., not shown prejudicial as of the facts of record. Dallas Lumber & Logging Co. v. S. P. Co., Unrep. Op. A475.

(3k) Rates on pine lumber found unreasonable from Kennedy, Ala., to Cincinnati, O., in so far as they exceed the rate from Covin, Ala., to same point. Browne v. S. Ry. Co., Unrep. Op. A484.

(3l) Rates on lemons from Whittier,

Cal., to Kennewick, Wash., found unreasonable in so far as they exceed the rates found reasonable in the Arlington Heights Fruit Exchange case. Collins Co. v. N. P. Ry. Co., Unrep. Op. A504.

(3m) Rates on paper bags from Rumford Falls, Me., to Memphis, Tenn., via Ohio River gateways compared with the rates via Potomac Yards, Va. Continental Paper Bag Co. v. M. C. R. R. Co., Unrep. Op. A516.

(3n) Rates on yellow pine lumber from Ansley and Wyatt, La., to Collinsville and Ramona, Okla., unreasonable in so far as they exceed the blanket rate from east Texas and Louisiana points to Oklahoma points. Davis Brothers Lumber Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A525.

(3o) A freight rate can seldom be considered in and of itself. It must be taken almost invariably in relation to, and in connection with, other rates. Kindel v. C. & S. Ry. Co. (Colo., 1914), 139 Pac. 1105, 1108.

(3p) In accordance with the Commission's suggestions in Sioux City Terminal Elev. Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98, defendants, in 27 I. C. C. 457, submitted a proposed scale of inbound rates on grain from producing stations in South Dakota, Nebraska, Iowa and Minnesota to Sioux City, Iowa. Complainants objected to these rates as too high. The matter was accordingly again brought before the Commission for the establishment of rates by affirmative order. HELD, that the local rates on coarse grain were unreasonable, and maximum rates prescribed ranging from 3.9c to 16.5c, the existing spread between rates on wheat and coarse grain to be observed. Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 31 I. C. C. 482.

(3q) Because rates between points in northern territory are just and reasonable, it does not follow that any adjustment between points in that region and points in southern territory is just and reasonable. Low Moor Iron Co. v. C. & O. Ry. Co., 30 I. C. C. 615, 618

(3r) Admitting that a relatively higher rate structure prevails in southern territory than north of the Ohio River, it does not follow that hauls originating in southern territory delivered to the North must bear the permanent impress of the per-ton-mile rates there prevailing especially where one portion of the through haul lies in the more thickly populated portions of the South. Low Moor Iron Co. v. C. & O. Ry. Co., 30 I. C. C. 615, 618.

(3s) Complainants attacked the rates on apples from Virginia to New York, N. Y., Philadelphia, Pa., Baltimore, Md., and Washington, D. C., as unreasonable and discriminatory. Apples were rated fifth class in Official Classification and sixth class in Southern Classification. But the C. & O. Ry., B. & O. Ry. and N. & W. Rys., engaged in this traffic, all imposed the fifth-class rate. The rate from the principal shipping points to New York was 22c, and those to the other destinations were differentials under the New York rate. At that rate the per-car charges were about $60, 18c per car-mile, or 33c per barrel. From Rochester, N. Y., to New York City, the rate was 15c for 370 miles, and from Rochester to Washington, D. C., 20c for 389 miles, as compared with 22c from Charlottesville, Va., to New York, for 340 miles. Rates on apples between points in Official Classification territory were generally on the fifth-class basis. The apple traffic required first-class ventilator equipment, and refrigerator cars were furnished when demanded. HELD, that complainant had failed to show that the existing rates were unreasonable or discriminatory. Complaint dismissed. Nix & Co. v. S. Ry. Co., 31 I. C. C. 145.

(3t) Fact that Commission compelled carrier to establish rates for comparatively shorter haul same as rates via longer route no reason for denying justice of establishing equal rates when distances are substantially equal. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576.

(3u) Rates from New York to southern Atlantic ports are not lower than the rates for like distances in trunk line territory. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 174.

(3v) Considering greater distances to destinations in Michigan, Indiana and Illinois from eastern mills than from the Soo., rates from the east are low, as compared with those from the Soo. This is also indicated by the comparatively low revenue per ton-mile yield. Lake Superior Paper Co., Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 408.

(3w) Rates via circuitous lines may not

be unreasonable or unjustly discriminatory as compared with rates in effect via direct lines. Merchants & Mfrs. Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 402.

(3x) Comparisons of related rates by Commission in determining reasonableness of rates criticized by complainants as "adjusting of differentials." That such a method may be employed in any proceeding before the Commission regarding the reasonableness of a rate cannot be validly questioned. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 423.

(3y) Rates from Memphis to Ohio River crossings should be lower than the rates from New Orleans, but in view of the great disparity between rates proposed and present rates to intermediate points, authority will not be granted to establish former without regard to increase in discrimination Memphis Freight Bureau v. I. C. R. R. Co., 30 I. C. C. 471, 476.

(3z) There is much force in contention that rates from San Francisco should be less than from Portland. Distances are less and the operating conditions are more favorable. California-Colorado Lumber Rates, 30 I. C. C. 461, 463.

(4a) Rates that are just and reasonable as between points in northern territory, are not necessarily just and reasonable as between points in that region and points in southern territory. Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 30 I. C. C. 615, 618.

(4b) Carriers should be permitted to continue to carry rates to all points east of the east bank of the Missouri River the same as or made with relation to the rates from New Orleans, and continue higher rates to intermediate points. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 628.

(4c) No substantial reason exists for charging a lower rate on fencing material from Anderson and other Indiana points to Texarkana than is charged on similar shipments from other points in Chicago-Cincinnati territory. Rates on Fencing and Fencing Material from Points in Indiana to Texarkana, Ark.-Tex., 30 I. C. C. 650, 652.

(4d) Present adjustment of rates from New Orleans and Memphis to Ohio River crossings is the result of competition between carriers and markets and appears not to have been governed to any considerable extent by relative distances to points of consumption. Memphis Freight Bureau v. I. C. R. R. Co., 30 I. C. C., 471, 475.

(4e) A rate may be relatively unreasonable and yet contain none of the elements of absolute unreasonableness. Transcontinental Commodity Rates, 32 I. C. C. 449, 452.

(4f) The duty to prove that a certain rate is unreasonable per se includes the duty to prove that it is relatively reasonable, i. e., that it does not operate to unjustly discriminate. Transcontinental Commodity Rates, 32 I. C. C. 449, 452.

(4g) Jobbing points not concerned as to measure of rate itself but as to relative adjustment between them. Rates on Sugar, 32 I. C. C. 495, 509.

(4h) Rate on lemons from California points to jobbing points in Montana, Nebraska, Colorado and Wyoming was, and is now $1 per 100 lbs., and Billings, Mont., and Sheridan, Wyo., should have same rate. Reparation to be awarded. Lindsay-Walker Co. v. S. P. Co., Unrep. Op. A-684.

(4i) Rates on lumber from Dyersburg, Tenn., to North Vernon, Ind., found unduly prejudicial as compared with rates to Cincinnati, O. Reduction ordered, but reparation denied. North Vernon Lumber Co. v. I. C. R. R. Co., Unrep. Op. A-688.

(4j) Rates on grain and grain products from East St. Louis and various points to Macon, Miss., not found unreasonable as compared with rates to Mobile, Ala. Defendant authorized to make a readjustment. Macon Merc. Co. v. M. & O. R. R. Co., Unrep. Op. A-693.

(4k) Third-class rate on common glassware from Cincinnati to Knoxville, not found unreasonable as compared with rate to Nashville or between other points in south. Traffic Bureau of Knoxville v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-695.

(4l) Rate on soft coal from Waverly, Ky. to Chicago, Ill., not found unreasonable as compared with rate from Eldorado, Ill. Drury Coal Co. v. I. C. R. R. Co., Unrep. Op. A-697.

(4m) Rate on coal from points in Kentucky on Straight Creek Branch of the

L. & N. R. R., not found unreasonable or discriminatory as compared with rate from mines on line of Southern Ry. near Middlesboro, Ky. Miles Bros. Co. v. L. & N. R. R. Co., Unrep. Op. A-700.

(4n) Substantially the same relationship exists in rates to Helena, Ark., and Memphis, Tenn., via boat lines as via the rail lines. Adjustment not found prejudicial to Helena. Helena Freight Bureau v. M. P. Ry. Co., Unrep. Op. A-701.

(4o) Rates on scrap iron from Bolton and Caney, Kans., to Tulsa, Okla., found unreasonable as compared with rates under defendant's tariff for similar distances. Reparation awarded and reduction ordered. Lebow v. A. T. & S. F. Ry. Co., Unrep. Op. A-704.

(4p) Rate on potatoes reshipped from Lancaster, N. H., to Manchester, N. H., not found unreasonable as compared with rate from Lancaster to Boston, Mass. Clement & Bray v. B. & M. R. R. Co., Unrep. Op. A-711.

(4q) Rates on bar iron from New Albany, Ind., to Owensboro, Ky., based on fifth-class in official classification territory not found unreasonable as compared with C. F. A. and Southern Classification territories. Owensboro Wagon Co. v. S. Ry. Co., Unrep. Op. A-714.

(4r) Rates on interior house trimmings from Kalamazoo, Mich. to Houston Tex., not found unreasonable as compared with rates from Chicago and Mississippi River crossings to various points. Union Trim & Lumber Co. v. G. R. & I. Ry. Co., Unrep. Op. A-716.

(4s) Rates on scrap iron from Kansas City to Chicago not found unreasonable as compared with rates from Minneapolis and other points. Sonken-Galamba Iron & Metal Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-718.

(4t) Rates on cypress lumber from Pensacola, Fla., to Lynchburg, Va., found unreasonable as compared with rates to other points in southern territory. Reparation awarded. Florida Cypress Co. v. L. & N. R. R. Co., Unrep. Op. A-725.

(4u) Rates on wheat and corn and products from points on St. L. & S. F. R. R. between Pleasanton, Kans. and the southern boundaries of Kansas and Missouri, and other points to points on Fayetteville-Okmulgee branch, not found unreasonable as compared with rates from Kansas City to Fort Smith via main line. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., Unrep. Op. A-728.

(4v) Rates on scrap iron from Sioux City, Ia. and Sioux Falls, S. D., not found unreasonable as compared with rates from other points to Chicago. Livingston Bros. v. C. M. &. St. P. Ry. Co., Unrep. Op. A-729.

(4w) Rates on coal from mines on L. & N. R. R. in Tennessee and Kentucky to Charlotte, N. C., not found unreasonable as compared with rates from mines on Southern Railway. Reparation denied. Yarbrough & Bellinger Co. v. L. & N. R. R. Co., Unrep. Op. A-733.

(4x) Rates on lumber from Lodiburg, Ky., to points in C. F. A. territory, not found unreasonable as compared with rates from Owensboro and Louisville. Bower & Co. v. L. H. & St. L. Ry. Co., Unrep. Op. A-744.

(4y) Rates on bituminous coal from western Kentucky mines to Mount Pleasant, Tenn., not found unreasonable as compared with rates between various points in south and west. Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co., Unrep. Op. A-748.

(4z) Express rate of $2.33 1-3 per 100 pounds on strawberries from Florin, Cal., to Helena, Mont., not found to have been unreasonable as compared with a rate of $2 from Florin to Butte, Mont. Lindsay & Co., Ltd., v. Wells Fargo & Co., Unrep. Op. A-755.

(5a) A rate may be relatively unreasonable and yet contain none of the elements of absolute unreasonableness. Transcontinental Commodity Rates, 32 I. C. C. 449, 452.

(5b) It was not established that there is such a relation between rates to twin cities and Duluth that proof of reasonableness of former is conclusive as to reasonableness of latter. Rates on Coke from Chicago and Peoria, Ill., 32 I. C. C., 543, 545.

(5c) Rates on apples from Blackwater, Mo., to Clinton, Ada, and Hobart, Okla., not found unreasonable as compared with rates from Overton, Mo. Walker v. M. P. Ry. Co., Unrep. Op. A-777.

(5d) Rate on linseed oil cake from Red Wing, Minn., to New Orleans, La., found unreasonable as compared with

Minneapolis. Red Wing Linseed Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-778.

(5e) Rates on crude cotton seed oil from Oklahoma, refined in transit at Kansas City, destined to South St. Paul, Minn., found unreasonable to the extent that they exceeded rate applicable to St. Paul. Swift & Co. v. C. G. W. R. R. Co., Unrep. Op. A-789.

(5f) Fare of 40c from Little Hocking, Ohio, to Parkersburg, W. Va., not found unreasonable as compared with fares from Marietta, Ohio, competition and volume of traffic considered. Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op. A-798.

(5g) Rates on potatoes from Coweta, Okla., to Des Moines, Iowa, not found unreasonable as compared with rates to Orilla and Bondurant, Iowa. Fox v. C. G. W. R. R. Co., Unrep. Op. A-800.

(5h) Rates on "spotless cleanser" cleaning compound from Bristol, Va.-Tenn., to eastern and Virginia cities and points in c. f. a. territory not found unreasonable as compared with rates from Saltville, Va. Reynolds Corporation v. N. & W. Ry. Co., Unrep. Op. A-803.

(5i) Rates on sulphuric acid from Argentine, Kan., and Kansas City, Mo., to Muskogee, Okla., not found unreasonable or unduly discriminatory as compared with rates to Arkansas points which are said to be paper rates. Muskogee Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-805.

(5j) Rates on wood pulp from Philadelphia, Pa., to Covington, Va., not found unreasonable as compared with rates between other points. Dill & Collins Co. v. P. & R. Ry. Co., Unrep. Op A-806.

(5k) Rate of $1.05 on creosote from Bayway, N. J., to Los Angeles, and San Francisco, Cal., via New Orleans, La., not found unreasonable as compared with 85-cent rate via Chicago, Ill. Bayway Chemical Co. v. C. R. R. Co. of N. J., Unrep. Op. A-810.

(5l) Rates on lumber from Columbus, Ind., to Evansville, Ind., via an interstate route, not found unreasonable as compared with rates between same points via other routes. Maley & Wertz v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-811.

(5m) Rates on paper bags from Hudson Falls and Ballston Spa, N. Y., to New Orleans and Mobile, not found unreasonable as compared with rates from Buffalo-Pittsburg territory. Union Bag & Paper Co. v. D. & H. Co., Unrep. Op. A-814.

(5n) Proportional rates on butter, eggs and dressed poultry from Pella, Iowa, to Mississippi River, factor of through rates to New York City, not found unreasonable as compared with rates from Knoxville, Iowa, comtemporaneously applicable. Rhynsburger v. C. R. I. & P. Ry. Co., Unrep. Op. A-815.

(5o) Pursuant to stipulation and following Penn Oil & Supply Co. v. A. T. & S. F. Ry. Co., A-690, complaint respecting rates on petroleum and products from Pennsylvania points to Burlington, Iowa, as compared with rates to St. Louis, Mo., dismissed. Penn Oil & Supply Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-817.

(5p) Rates on malleable iron castings from St. Louis to Tulsa not found unreasonable as compared with rate from Joliet, Ill., or from St. Louis to other Oklahoma points. Norris v. A. T. & S. F. Ry. Co., Unrep. Op. A-820.

(5q) Rate on bar iron from Fort Smith, Ark., to Mena, Ark., found unreasonable to extent it exceeds 23 cents which is prescribed for future whether shipments originate at Fort Smith proper or beyond. Reparation awarded. Beck & Corbitt Iron Co. v. K. C. S. Ry. Co., Unrep. Op. A-836.

(5r) Rate on saw mill machinery from Beaumont, Tex., to Elizabeth, La., not found unreasonable. Defendant makes comparison with various other rates between Louisiana and Texas and Oklahoma and Texas. Beaumont Iron Works Co. v. G. C. & S. F. Ry. Co., Unrep Op. A-853.

(5s) Rate on lumber from Gemmell, Minn., to Bedford, Ohio, not found unreasonable as compared with rate to Chicago, Ill. Bradley Timber & Railway Supply Co. v. M. & I. Ry. Co., Unrep. Op. A-862.

(5t) Rates on mine props from Jefferson and Dorset, Ohio, to Ellsworth, Pa., found unreasonable. Rates from other stations in immediate vicinity were relatively lower. Limback v. L. S. & M. S. Ry. Co., Unrep. Op. A-864.

(5u) Rate on moulding sand from Richmond, Va., to Greensboro, N. C., found unreasonable as compared with

rates to High Point and Charlotte, N. C. Guilford Foundry Co., v. S. Ry. Co., Unrep. Op. A-873.

(5v) Mere reference to tariffs that the rate is higher in one direction than in the other does not in itself justify a finding of unreasonableness. Lewis v. A. C. L. R. R. Co., Unrep. Op. A-883.

(5w) Rates from certain defined territory to Spokane, Wash., and points taking same rates, found to have been unduly discriminatory and prejudicial. Permission granted to awarded reparation. Acme White Lead & Color Works v. N. P. Ry. Co., Unrep. Op. A-884.

(5x) Rate on cottonseed meal from Jackson, Tenn., to Barron, Wis., not found unreasonable as compared with rate from same point to Duluth, Minn., and Superior, Wis., farther distant points. Bartlett Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. A-887.

(5y) Sixth-class rate on sodium alumnic sulphate from Erie, Pa., to Memphis, Tenn., not found unreasonable as compared with commodity rate from same point to St. Louis, Mo. Oliver-Finnie Co. v. L. & N. R. R. Co., Unrep. Op. A-898.

(5z) Rate on strawberries from Hood River, Oreg., to Duluth, Minn., not found unreasonable as compared with rate to Minneapolis, Minn. Fitzsimmons-Palmer Co. v. American Express Co., Unrep. Op. A-900.

(6a) Rate on soft coal from Peoria, Ill., to New Prague, Minn., compared with rates from Superior, Wis., Duluth, Minn., and other points to same destination. New Prague Flouring Mill Co. v. M. St. L. R. R. Co., Unrep. Op. A-902.

(6b) Rates on fresh fruits and vegetables from points in California to Seattle, and Tacoma, Wash., compared with rates to points in Washington, Idaho and Montana. Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points, Unrep. Op. A-912.

6c) Rate on cabbage from Brookhurst and Stanton, Cal., to Spokane, Wash., compared with rate from same points to Chicago, Ill., Butte and Missoula, Mont. Ryan & Newton Co. v. O. W. R. R. &. N. Co., Unrep. Op. A-914.

(6d) Rate on coal from Coulterville, Ill., to Chaffee, Mo., found to be unduly discriminatory as compared with rate from same point to Cape Girardeau, Mo. Astor v. St. L. & S. F. R. R. Co., Unrep. Op. A-915.

(6e) Rate of 75 cents per ton on coal from Marion, Johnson City, and West Frankfurst, Ill., to Chaffee, Mo., found unreasonable to the extent that it exceeded the rate to Cape Girardeau, Mo., a point involving a longer haul. Reparation awarded. Astor v. St. L. & S. F. R. R. Co., Unrep. Op. A-915.

(6f) Rate on coal from Coulterville, Ill., to Chaffee, Mo., found to be unduly discriminatory as compared with rate from same point to Cape Girardeau, Mo. Astor v. St. L. & S. F. R. R. Co., Unrep. Op. A-915.

(6g) Rate of 75 cents per ton on coal from Marion, Johnson City and West Frankfurst, Ill., to Chaffee, Mo., found unreasonable to the extent that it exceeded the rate to Cape Girardeau, Mo., a point involving a longer haul. Reparation awarded. Astor v. St. L. & S. R. R. Co., Unrep. Op. A-915.

(6h) Rates on lumber to Newark, N. J., from points between Chattanooga, and Nashville, Tenn., between Huntsville, Ala., and Nashville, applying via Nashville, should not exceed the rates from the nearest one of the basing points by more than 1-2 cent per 100 pounds for each 10 miles or fraction thereof. Atha Tool Co. v. N. C. & St. L. Ry. Co., Unrep. Op. A-919.

(6i) Rate on iron and steel articles from Coatesville, Pa., to Moncton and St. John, New Brunswick, and Amherst, Nova Scotia, not found unreasonable as compared with rate from Pittsburg to same destinations. Rates on Iron and Steel Articles from Coatesville, Pa., and Other Points to Canadian Destinations, Unrep. Op. A-928.

(6j) Rate on dry glue from Carrollville, Wis., to Winston-Salem, N. C., not found unreasonable as compared with lower rates from Milwaukee and Cudahy, Wis., farther distant points. United States Glue Co. v. C. & N. W. Ry. Co., Unrep. Op. A-930.

(6k) Rate on bi-chromate of soda from Niagara Falls, N. Y., to Milwaukee, Wis., not found unreasonable as compared with rate from Buffalo and certain Niagara frontier points to same destination. Trostel & Sons Co. v. L. V. R. R. Co., Unrep. Op. A-932.

(6l) Rate on bi-chromate of soda

from Niagara Falls, N. Y., to Milwaukee, Wis., not found unreasonable or unduly prejudicial as compared with rate from Buffalo and certain Niagara frontier points to same destination. Trostel & Sons Co. v. L. V. R. R. Co., Unrep. Op. A-932.

(6m) Rate on prairie hay from Melissa, Tex., to Little Rock, Ark., not found unreasonable as compared with rates from same point to Vicksburg, Miss., and New Orleans, Ia. Hughes & McCoy v. C. R. I. & G. Ry. Co., Unrep. Op. A-935.

(6n) Rates on intrastate shipments of rough walnut logs in Missouri, Arkansas, Illinois and Iowa, compared with rates from points in Missouri and Arkansas to East St. Louis, Ill. East St. Louis Walnut Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-941.

(6o) Rates on straw from Halls and Harbo, Mo., to Quincy, Ill., and Halls, and Albany, Mo., to Peoria, Ill., not found unreasonable as compared with emergency rates from Cameron, Mo., to Quincy, Ill., made during crop shortage. Schreiber Hay & Grain Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-946.

(6p) Rates on scrap iron and scrap steel from Joliet, Ill., points in Indiana, not found unreasonable as compared with rates between Danville, Ind., and Crawfordsville, Ind., and other points. Scrap Iron Rates Between Chicago and Joliet, Ill., Unrep. Op. A-948.

(6q) Refusal to make allowance of 500 pounds for dunnage on automobiles from Toledo, Ohio, to San Francisco, Cal., not found to be unreasonable or unduly prejudicial. Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-951.

(6r) Rate on canned goods from Baltimore and other points in Maryland to Alexandria, La., not found unreasonable or unduly prejudicial as compared with rate to competing points in same general territory. Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955.

(6s) Rate on canned goods from Baltimore and other points in Maryland to Alexandria, La., not found unreasonable or unduly prejudicial as compared with rate to competing points in same general territory. Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955.

(6t) The duty to prove that a certain rate is reasonable per se includes the duty to prove that it is relatively reasonable, i. e., that it does not operate to unjustly discriminate. Drain Tile from Illinois Points, 35 I. C. C., 83, 85, quoting 32 I. C. C. 449.

§30. Revenues from Facilities.

See Evidence, §51.

(a) A railroad company may be operated with a less return than it should enjoy, or even at a loss, but neither condition of affairs would justify the exaction by it of rates higher than they reasonably should be for the services performed, all things being considered. So also the fact that the net earnings of a carrier may be large does not of itself justify the Commission in fixing a rate at less than is reasonable for the service, all things considered. The Five Per Cent Rate Case, 31 I. C. C. 351, 359.

(b) Evidence establishing general inadequacy of return impeaches the general reasonableness of rates which result in such inadequate return. It is not conclusive evidence that the rates are unduly low, but it creates a reasonable presumption to that effect, and it suffices to meet the burden of proof cast by the law upon the carriers which propose rate advances. But such presumption may be overcome. In several notable instances the shippers have succeeded in overcoming the presumptions flowing from evidence of inadequate return. The Five Per Cent Rate Case, 31 I. C. C. 351, 435. (Dissenting Opinion.)

(c) Where considerations apply generally to tariffs in their entirety and approximately with the same force to each part thereof, the law warrants the Commission in passing upon the propriety of the tariffs en bloc. To construe the law to the contrary would nullify it and reduce the Commission to a state of administrative paralysis. Evidence of inadequate returns upon the fair value of property devoted to the public use is prima facie a showing that existing rates are unduly low, and that higher rates are presumably just and reasonable. The contention that the Commission may not pass upon rates as a whole, but that it is obliged to consider and pass separately upon each particular rate between every two points, is expressly and explicitly repudiated. The Five Per cent Rate Case, 31 I. C. C. 351, 448. (Dissenting Opinion.)

§30½. Risk.

(a) Risk considered in determining reasonableness of rate. Kansas-California Flour Rates, 29 I. C. C. 459, 462; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 503; Rates on Flaxseed from Minneapolis to Fredonia, 29 I. C. C. 633, 636.

(b) Loss and damage claims, as an element to be considered in determining reasonableness of rates. Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 23.

§32. Standard for Carriers.

See Branch Lines, §2; Evidence, §55, §56.

(a) Generally speaking, shippers are entitled to a reasonable charge by the direct line of transportation, and an unreasonable rate by the direct line cannot be allowed for the purpose of permitting a circuitous line to engage in the business at a reasonable profit. Grain Rates in Central Freight Assn. Territory, 28 I. C. C. 549, 558.

§32½. Subsequent Reduction.

See Evidence, §64; Reparation, §16.

(a) Neither a mere subsequent reduction of a rate nor carrier's willingness to pay, is sufficient to warrant a finding that the former rate was unreasonable. Omaha Cooperage Co. v. I. C. R. R. Co., Unrep. Op. A-629.

(b) It has frequently been held that the mere voluntary reduction of a rate is not sufficient to prove that it was unreasonable. Omaha Cooperage Co. v. I. C. R. R. Co., Unrep. Op. A-629.

(c) Commission has frequently said that the fact of the reduction does not of itself establish that preceding rates were unreasonable. Pacific Fruit Exchange v. S. P. Co., 32, I. C. C., 48, 49.

(d) That defendant voluntarily established a lower rate on wood pulp from Philadelphia, Pa., to Covington, Va., after shipments moved is sufficient to warrant finding that rate charged was unreasonable. Dill & Collins Co. v. P. & R. Ry. Co., Unrep. Op. A-806.

(e) Subsequent establishment of lower rate on grain screenings from South Chicago, Ill., to Owensboro, Ky., not sufficient to prove unreasonableness of rate charged. Reparation denied. American Milling Co. v. C. I. & S. S. R. R. Co., Unrep. Op. A-795.

(f) Rate of 28 cents on wood pulp from Philadelphia, Pa., to Covington, Va., not found unreasonable as compared with subsequently-established rate of 15 cents. Dill & Collins Co. v. P. & R. Ry. Co., Unrep. Op. A-806.

(g) Reduced rates on wrought iron pipe from Los Angeles, Cal., to Connor, Shale and Signa, resulting from reductions of intrastate rates from Bakersfield, were subsequently established on interstate traffic. This does not warrant a finding that rates previously in effect were unreasonable. General Construction Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-812.

(h) That joint through rate was subsequently established is not sufficient to prove that rate applied to coal tar from Fort Dodge, Iowa, to Moline, Ill., was unreasonable at the time. Lewis Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-819.

(i) The fact that a rate was increased and subsequently reduced to the basis formerly in effect is not in this case sufficient to prove that the increased rate was unreasonable. Beaumont Iron Works Co. v. G. C. & S. Ry. Co., Unrep. Op. A-853.

(j) 28-cent rate on lumber from Gemmell, Minn., to Bedford, Ohio, voluntarily reduced to 27 cents subsequent to movement of shipment. Rate charged not found unreasonable. Bradley Timber & Railway Supply Co. v. M. & I. Ry. Co., Unrep. Op. A-862.

(k) Rate on mine props from Dorset and Jefferson, Ohio, to Wilsworth, Pa., found unreasonable to extent that it exceeded 7 cents. Limback v. L. S. & M. S. Ry. Co., Unrep. Op. A-864.

(l) Fact that rate was subsequently reduced would not of itself warrant a finding that rate charged was unreasonable. Limback v. L. S. & M. S. Ry. Co., Unrep. Op. A-864.

§34. Terminal Facilities.

See Terminal Facilities.

(a) Terminal expense considered in determining reasonableness of rate. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678.

§35. Time of Changing Rate.

See Season Rates.

(a) Granting season rates on grapes from Lawton, and St. Joseph, Mich., to Charleston, W. Va., and failure to grant such rate to Hinton, W. Va., found to be unreasonable and unduly prejudicial. Hinton Fruit & Produce Co. v. C. & O. Ry. Co., Unrep. Op. A254.

§36. Ton-mile Revenue.

See Supra, §11; Evidence, §36, §58.

(a) Ton-per-mile revenue considered in determining reasonableness of rates. Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 8; Emigrant Movables from South Dakota, 29 I. C. C. 40, 41; Maier & Co. v. S. P. Co., 29 I. C. C. 103, 104, 105; Pacific Creamery Co. v. S. P. Co., 29 I. C. C. 405, 406; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 429, 434, 436; Crowdus Bros. v. A. T. & S. F. Ry. Co., 29 I. C. C. 449, 452; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502; Interior Iowa Cities Case, 29 I. C. C. 536, 537; Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 577; Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 591; Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I C. C. 629, 632; Rates on Flaxseed from Minneapolis to Fredonia, 29 I. C. C. 633, 636.

(b) Average ton - per - mile revenue considered in determining reasonableness of rate. Atlanta Freight Bureau v. N. C. & St. L. Ry. Co., 29 I. C. C. 476, 486; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502.

(c) Per-ton-mile revenue is but one of the factors to be considered in establishing a new rate or in condemning an existing one as unreasonable. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 598.

(d) High earnings no conclusive test of unreasonableness. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32, I. C. C., 272, 275.

(e) Per ton-mile earnings, while of value in certain instances, are in no sense conclusive in determining whether or not rates on a certain commodity on a road are unreasonably low. Particularly is this true where the density of traffic is much larger on one road than on another. Pulp & Paper Mfrs. Traffic Asso. v. C. M. & St. P. Ry., 34 I. C. C. 500 507.

§37. Two Line Haul.

See Evidence, §59.

§38. Value of Commodity.

See Classification, §11; Evidence, §61.

(a) Sand is a commodity which has a low value in a comparatively large bulk. Consequently, it cannot bear as large a part of general costs as other more highly valued commodities. At the same time, there must be considered the nature of the service performed by the railway, for the allegation that a commodity cannot be disposed of in the market at a profit on the existing rate, even if such allegation is found to be justified, is not necessarily conclusive of the unreasonableness of the rate. Whether or not an article can be disposed of at a profit may depend upon conditions for which the railway is in no way responsible. The obligation of the railway is as to the reasonableness of the charge for the service performed by it. Application of Fonthill Gravel Co., Ltd. (Can. Ry. Comm.), File 18265.3.

(b) It is not fair in gauging the reasonableness or unreasonableness of a particular rate to consider the value of the commodity in its most unfavorable period. Rates on Lumber from Southern Points, 34 I. C. C. 652, 693.

§40. Volume of Traffic.

See Evidence, §63.

(a) Volume of traffic considered in determining reasonableness of rate. Commercial Club of Terre Haute v. V. R. R. Co., 29 I. C. C. 383, 389; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 431; Kansas-California Flour Rates, 29 I. C. C. 459, 461; Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 593, 598.

(b) Fact that traffic is hauled in trainload lots cannot be made basis of rates different from those applied to shipments in single carload. Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co., 29 I. C. C. 664, 665.

(c) Fact that rates have been long maintained and that the volume of traffic has increased in recent years raises a strong presumption that they are reasonable and profitable to the carriers.

Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515.

(d) If the rate on a given article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per 100 lbs. There may, however, be situations where the economies are so marked and sure of attainment, and the considerations against the establishment of additional rates are so minimized, that it is unreasonable to apply the usual rates on a commodity to shipments made in some peculiar form. Am. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 466.

(e) A rate may be reasonable and yet higher than another rate for substantially same service where traffic density is greater, 31 I. C. C. 654, 659.

(f) The mere fact that the amount of granite shipped to Nebraska is small should not preclude the establishment of a reasonable rate. Nebraska State Ry. Comm. v. C. V. Ry. Co. 32, I. C. C., 41, 46.

REBATES

See Advanced Rates, §7 (1), (b); Allowances, §8 (5), (a), §9 (j); Crimes, §2 (c), §25 (a), (b), VI; Facilities and Privileges, §15 (d); Reparation, §17 (c); Tap Lines, §9 (d); Through Routes and Joint Rates, §18 (b).

RECIPROCAL SWITCHING

See Switch Tracks and Switching, §6; Terminal Facilities, §5 (e).

RECONSIGNMENT.

I. LEGALITY.
§1. Right to grant privilege.
II. DISCRIMINATION.
§2. In general.
III. REASONABLENESS OF CHARGES.
§3. In general.
IV. TARIFFS AND PUBLICATION.
§4. Necessity of publishing.
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V. PROCEDURE AND REPARATION.
§7. In general.
§8. Parties to complaint.
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CROSS REFERENCES

See Additional Charges, (g); (t); Business Secrets, I (c); Demurrage, §2 (b), (j), §4 (a), §12 (e); Evidence, §13 (1), (h); Routing and Misrouting, §1 (b), §7 (aa); Special Contracts, §2 (c); Storage, §1 (a); Through Routes and Joint Rates, §18 (b), §22 (q), (r).

I. LEGALITY.

§1. Right to Grant Privilege.

(a) There is no right inherent with the shipper to demand that any transfer resulting from the reconsignment at his request of freight originally consigned and billed to a given destination, shall be performed by the carrier, either at its own expense or otherwise; nor is there any provision of law under which a carrier may be compelled to possess itself of special equipment in such amount that a considerable portion of it would remain idle for six months in the year. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 624.

(b) Question of detention is one that must be worked out by itself, and it is not reasonable that the advantages of reconsignment should be thrown away in order to avoid abuses that can be remedied in other ways. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 655.

(c) The primary advantages of the practice of reconsignment are found in the increase in fluidity and regularity of the movement of commodities; the elimination of economic waste in reduction of handling between producer and consumer, increase in celerity of movement, and facilitation of the direction of commodities to the point of most active demand. Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 651.

(d) Reconsignment is a service naturally and normally to be afforded not by the outbound, but by the inbound carrier. Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 654.

(e) Reconsignment is a service which the carrier may, under the Act, be properly expected to furnish. The power

of Congress to regulate interstate commerce is not hampered by contracts made in regard to such matters by individuals, but contracts of that nature are made subject to the possibility that even if valid when made Congress may by exercising its power render them invalid. Charles Becker v. P. M. Ry. Co., 28 I. C. C. 645, 655.

(f) Carrier's refusal to accept reconsignment orders for foreign-line points on freight loaded in respondent's cars and those of another line not found to be in violation of the Act. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620.

(g) Reconsignment, although often referred to as a privilege, is primarily a service in connection with the transportation of property. An accurate conception of what is meant by the term is afforded by Conference Ruling No. 72 (c), which states that "without specific qualifications the term reconsignment includes changes in destination, routing, or consignee." Diversion is the same as reconsigning except that the destination is changed prior to the arrival of the shipment at the original billed destination. The service differs in no material respect whether a specific through rate or a combination rate is applied. The total charges payable by the shipper may or may not be affected by the reconsignment. Whether the charges are increased is determined by the manner in which the rates are adjusted and whether the carrier provides in its tariffs for a diversion or reconsignment charge in addition to the rate. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 527.

(h) Contentions that the practices of diversion and reconsignment are a source of serious inconvenience and loss to carriers with no compensating advantages and are not a commercial necessity, are of slight relevance where carriers have voluntarily initiated such practices with the result that shippers have adjusted their business methods accordingly. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 528.

(i) In no case has the Commission condemned reconsignment as a service. The abuse and not the reasonable use of the practice has been the subject of criticism. If granted, subject to such restrictions as may be necessary to prevent the abuses to which the practice is susceptible, and conditioned upon the payment of a reasonable charge for the additional labor, cost, and liability which the service imposes upon the carriers, there appear to be no substantial reasons for apprehension that a modification of the present rules of the carriers to the extent of permitting reconsignment on basis of the through rate will be attended with injurious results. Reconsignment prevails throughout the greater portion of the United States, and although many carriers have failed to confine the practice within proper bounds, or to make a charge for the service, it has not produced the disastrous effects which some professed to believe would follow the adoption of a more liberal policy in this regard. These facts tend to strengthen the conclusion that reconsignment within reasonable limits is of benefit to the public and not without its advantages to the carriers. The specific objections that reconsignment tends to congestion of trackage facilities and excessive detention of cars at reconsignment points have been considered in other cases. It is only necessary to repeat that these evils may be obviated and that the advantages of reconsignment should not be thrown away in order to avoid abuses which may be controlled by remedies more appropriate to the end sought to be attained. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 528.

(b) Reconsignment is largely outgrowth of commercial conditions not created by carrier. C. & N. W. Reconsignment Rules, 29 I. C. C. 620, 623.

II. DISCRIMINATION.

See Discrimination.

§2. In General.

See Discrimination, §9 (b).

(a) Though reconsignment may cause congestion at certain points through possible abuses in the matter of detention of cars, it is not reasonable that the advantages of reconsignment should be thrown away in order to avoid abuses which may be remedied in other ways. Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 655.

(b) Privilege of inspection previous to reconsigning coal not provided for in tariffs. It would seem to be an incident of the reconsigning service when it involves holding of cars. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 653.

(c) Shipments of lumber transferred en route into another car. Subsequently another shipment from same point of origin and transferred en route into car in which first shipment originated. Carrier notified consignor giving ex-car number, but one consignor misunderstood and ordered reconsignment. Reparation denied. Berthold & Jennings Lumber Co. v. M. & O. R. R. Co., Unrep. Op. A140.

(d) Commission has not ordered the granting of reconsignment nor its extension except to remove discriminations or where the rules were unreasonable. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 623.

(e) Order for diversion received after shipment was out of route. Reparation denied. Southern Lumber Co. v. L. R. & N. Co., Unrep. Op. A-566.

(f) Instructions received too late to enable carrier to divert shipment of coal from Habersham, Tenn., to Tifton, Ga., originally consigned to Gainsville, Fla. Reparation denied. Campbell Coal Co. v. L. & N. R. R. Co., Unrep. Op. A-604.

(g) The A. T. & S. F. Ry. and other carriers authorized reconsignment between Chicago and the Pacific Coast of less-than-carload shipments on the basis of through rates from originating or intermediate basing point to destination without extra charge, when orders were received prior to arrival of shipment at destination, provided such reconsignment caused no back or out-of-line haul. The A. T. & S. F. R. R. Co. proposed to withdraw the reconsignment privilege west of Albuquerque and Belen, N. M. It had never been the intention to apply the reconsigning privilege west of Albuquerque and Belen inasmuch as no reason existed for such reconsignment because of the absence om competitive conditions. Where the aggregates of intrastate rates from points of origin to Vidal, Calif. (a station near California-Arizona state line) and the interstate rates thence to Parker and other points on the same branch of the Santa Fe lines in Arizona made less than the through rates, merchants at the Arizona points consigned their shipments to Vidal at the intrastate rate and then reconsigned them to destination under the interstate rate, for the purpose of getting the benefit of the combination rate. Other carriers do not provide for reconsigning privileges in the territory in question, and it was not seriously claimed that undue discrimination would result to anyone from the proposed modification of the rule. HELD, the practice of reconsigning to defeat the through rate was not authorized and the carriers have justified the withdrawal of the privilege. Less Carload Freight Reconsignment Privileges, 434, 32 I. C. C. 85.

(h) No reason why lath should have been excepted from operation of reconsignment rule in defendant's tariff. Reparation awarded. Cranston Lumber Co. v. N. S. R. R. Co., Unrep. Op. A-779.

(i) Tariff restricting privileges of reconsignment to routes via which basis of divisions had been established found unlawful. Reparation awarded on account of overcharge. Alliance Alfalfa Hay Co. v. S. Ry. Co., Unrep. Op. A-837.

III. REASONABLENESS OF CHARGES.

See Reasonableness of Rates.

§3. In General.

(a) There is no inherent right with the shipper to demand that any transfer resulting from reconsignment at his request of freight originally consigned and billed to a given destination, shall be performed by the carrier, either at his own expense or otherwise. Chicago & Northwestern Railway Reconsignment Rules, 29 I. C. C. 620, 624.

(b) An offer by a carrier of the privilege of reconsignment on the basis of the through rate from point of origin to final destination, subject to the condition that it is not to be construed to give the shipper the right of requiring its cars to go beyond its own rails to a point to which there is no through rate, is reasonable, though as to points to which through routes and joint rates exist it demands the shipper's co-operation in order that it may supply such cars as may properly be devoted to the through movement. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 623.

(c) The Commission considered the propriety of a proposed reconsignment rule providing that reconsignment orders for points beyond the lines of the C. & N. W. Ry. or the C. St. P. M. & O. Ry. would not be accepted on perishable or other freight when loaded in refrigerator cars of either company. The rule was really aimed at the potato industry. The C. & N. W. Ry. owned some 2,500 refrigerator cars; about

1,000 locals, and 1,500 for carload traffic. It was the principal potato carrier from Wisconsin to Chicago, handling from 8,000 to 10,000 cars per season and most of the cars were reconsigned at Chicago to other destinations. Out of a total of 4,950 cars shipped over the C. & N. W. Ry. between August 1, 1912, and July 31, 1913, all but 205 cars were reconsigned at Chicago to other destinations. The bulk of the movement was during the three months beginning November 15th of each year, and on account of the limited period respondent was compelled to practice the strictest economy to conserve the car supply. If called upon for cars for direct through shipments to foreign destinations, or for cars for movement to Chicago and reconsignment thence, respondent supplied private refrigerators which might be sent to any destination, foreign cars received in the ordinary course of business, or foreign cars secured empty from connections for designated loading. The proposed rule was not intended to deny to shippers the necessary equipment for traffic tendered for through transportation to through rate points, nor to nullify the offer of reconsignment at Chicago; but to conserve the supply of system cars for general movement of business of the Northwestern system and to insure notice at the time cars were ordered if desired for off-the-line points. During the shipping season respondent frequently holds at Chicago, for inspection and for reconsignment from 300 to 400 cars of potatoes, which are not subject to demurrage or other detention charges. HELD, that a carrier may require, that when freight is tendered which is going beyond its rails the fact should be stated at the time in order that it may furnish such cars as may be suitably applied to through transportation. Form of revised rule, clearly stating its limited application to shipments originating on respondent's lines, suggested. Order of suspension vacated. Chicago & Northwestern Railway Reconsignment Rules, 29 I. C. C. 620.

(d) Complainants, Milwaukee coal brokers, attacked certain reconsignment charges imposed on bituminous coal shipped by them to Milwaukee and diverted thence to destinations beyond. Complainants had no storage facilites. and their practice was to ship coal from the mines in Ohio, Pennsylvania, and West Virginia to Toledo, Ohio, and thence over the P. M. Ry. to Ludington, Mich., a distance of 273 miles, whence it was carried on the company's car ferries across Lake Michigan, 97 miles, to Milwaukee. At that point the P. M. Ry. had no extensive terminals, but only an interchange track, accommodating about 200 cars, connecting the ferry with the tracks of the C. M. & St. P. Ry. The service of switching cars from ferry to interchange track and from the latter to the tracks of the C. M. & St. P. Ry. were performed by the latter company under contract with the P. M. Ry. Coal was commonly shipped to Milwaukee under "blind billing," the destination being, for example, "Milwaukee for beyond," that it might be reconsigned during transit. Coal actually delivered in Milwaukee paid a rate of $2.50 per ton from the Kanawha mines; that going beyond was charged a proportional rate of $1.90 to Milwaukee and full local rates beyond. On October 2, 1912, the P. M. Ry. issued a tariff intended to eliminate, as far as it was concerned, any holding and reconsignment of coal at Milwaukee, and to provide for reconsignment at Ludington only on a charge of $2 per car, unless reconsignment orders were in hands of its agent at Ludington prior to arrival of the cars. The tariff provided, however, for reconsignment "free from terminal yards to customary deliveries plus switching charges, if any, as provided for in switching tariffs at destination, also at junction points, to connecting lines, when no through rates are in effect to points on such connecting lines via such junctions." Following this, all cars consigned to complainants were held at Ludington, and complainants requested to furnish statements of final destination at that point; but this they refused to do, standing on their asserted right to give such orders only after arrival of the coal at Milwaukee. After considerable controversy, during which to complainant's knowledge a large number of cars were accumulating at Ludington, the P. M. Ry. issued another tariff, canceling the preceding one and expressly stipulating against reconsignment at Milwaukee. Complainants contended that they were entitled to free reconsignment at Milwaukee under the former tariff during the controversy, attacked the reasonableness of the rule imposing a reconsignment

charge of $2, and contended that denial of free reconsignment at Milwaukee constituted unjust discrimination, in view of the privilege enjoyed at Chicago. They also asked reparation for the holding of their coal at Ludington, including reconsignment and demurrage charges on the cars detained, and tort damages for the detention and changed condition of the market. It appeared that it was necessary for the complainants, in order effectively to reconsign coal, to inspect the coal before reconsigning it. To inspect at Ludington was clearly out of the question, and it also appeared that reconsignment at Ludington was impracticable, owing to the uncertainty of lake transportation. There was no evidence that the former custom of reconsigning at Milwaukee had resulted in serious congestion on the P. M. Ry.'s interchange tracks at that point. It appeared that if reconsignment were allowed at Ludington, defendant would be afforded an opportunity to avoid many out of line hauls. At Chicago the service was largely the result of the rate situation, coal moving in on local and terminal rather than on proportional rates, as at Milwaukee. HELD, that complainants were not, under the tariff of Oct. 2, 1912, entitled to free reconsignment at Milwaukee, but only at a charge of $2 per car. Complainants, not having used reasonable diligence to minimize their loss, were not entitled to general damages caused by the detention and changed conditions of the market, but were entitled to a refund of demurrage charges, and of reconsignment charges where they did not receive passing notice from Toledo in time to permit them to reconsign at Ludington prior to arrival of the cars. Directed that defendants maintain a reconsignment rule providing for passing notice from Toledo, and a charge of $2 per car where orders of reconsignment were not received at Milwaukee prior to arrival of cars; otherwise reconsignment service to be free. Charles Becker v. P. M. Ry. Co., 28 I. C. C. 645.

(e) While reconsignment may cause congestion through possible abuses in the matter of detention of cars, the question of detention is one which must be worked out by itself, it not being reasonable that the advantages of reconsignment should be thrown away in order to avoid abuses that can be remedied in other ways. Charles Becker v. P. M. Ry. Co., 28 I. C. C. 645, 655.

(f) Inspection may fairly be regarded under appropriate circumstances as an incident of reconsigning service when it involves holding of cars. Charles Becker v. P. M. Ry. Co., 28 I. C. C. 645, 653.

(g) Shipper has no right to demand any transfer resulting from reconsignment, as his request of freight originally consigned to a given destination shall be performed by the carrier, either at its own expense or otherwise. C. & N. W. Reconsignment Rules, 29 I. C. C. 620, 624.

(h) Carrier gives free reconsignment if notice is received prior to arrival of shipment at Harlem River Junction, N. Y., and a charge of 45c per day is not unreasonable when the reconsignment order is not received until after the shipment arrives. Scattergood & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A412.

(i) Through error of defendant's agent by not knowing correct rate when consignor asked for the shipment to be diverted in transit, the complainant is entitled to reparation. Welisch & Co. v. St. L. S. W. Ry. Co., Unrep. Op. A423.

(j) Complainant through mistake consigned car to Birmingham, Ala., then reshipped to Montgomery, the reshipping charge not found unreasonable. Illinois Leather Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A497.

(k) Complainant failed to give reconsignment notice within tariff period and the demurrage charges collected at Lawson, Ont., not found unreasonable. Scattergood & Co. v. P. M. R. R. Co., Unrep. Op. A511.

(l) Tariffs did not provide for reconsignment on basis of joint through rate contemporaneously in effect. Reparation awarded. Carpenter-Olwell Lumber Co. v. N. P. Ry. Co., Unrep. Op. A-658.

(m) The complainant, heard heretofore (27 I. C. C. 114), attacked the combination rate of 44c charged upon a carload of rosin shipped in September, 1910, from Pensacola, Fla., to Chicago, Ill., the car being diverted upon complainant's request to Cincinnati, Ohio. The diversion was effected at Nashville, Tenn. The

through rates were 20c to Chicago and 19c to Cincinnati. The intermediate rates were to Nashville 17c and from Nashville to Cincinnati 27c. Defendant did not then permit reconsigning and diversion on its line of traffic in general. In the former report it was held that, under the circumstances, the denial of the reconsigning privilege was unreasonable and unlawful. Reparation was awarded on the basis of the through rate plus $3 per car for the service rendered in effecting the diversion at Nashville. Defendant was ordered to file its tariff providing for a rule in accordance therewith. The tariff was filed and defendants also filed petition for rehearing upon the merits of the case and upon the broader question of the authority and justice and propriety of requiring it to establish the rule upon this particular traffic, etc. The case was reopened for further hearing, but solely upon the question of the amount of the charge for the service incident to the reconsignment. In considering this, it is found that the principal item of expense involved was for telegraphing. There are also items of clerical hire and switching, but the evidence does not show that any such switching as alleged was necessary or was performed. HELD, that where reconsignment or diversion is requested of carload shipments of rosin moving over defendant's line from Pensacola, under original consignment to Chicago; where contents of the car remain unchanged; where no out of line haul is necessary; where the request is made in reasonable time; defendant should permit such reconsignment or diversion on basis of the through rate from point of shipment to final destination, with an additional maximum charge of $5 per car for services rendered in effecting the reconsignment or diversion. Central Commercial Co. v. L. & N. R. R. Co., 33 I. C. C. 164.

(n) Complainants attacked the charges imposed on five carloads of pine lumber shipped from Chattanooga, Tenn., to Cincinnati, Ohio, and there reconsigned to Toronto and London, Ont. as unreasonable, arbitrary and discriminatory. The rates charged were the sum of the intermediates to and from Cincinnati; 28c per 100 lbs. on the shipments to Toronto, and 25c to London. The joint through rates from Chattanooga were; to London, 22 1-2c, and to Toronto, 23c. The lumber shipped by complainants moved by barge on the Tennessee River from Fabius, Ala., to Chattanooga, where it was transferred to defendants' cars. Shippers at points on the N. C. & St. L. Ry. were accorded the right to reship at the through rates; other lines in the same territory permitted reconsignment and diversion on that basis; and defendants permitted these practices where the insolvency of the original consignee, or his refusal to accept on account of delay in transit, the act of God, or the public enemy was the reason for the request. They also authorized reconsignment at the through rate of shipments consigned to railroad companies. HELD, (1) that defendants' refusal to allow reconsignment and diversion of lumber on basis of through rate from points of origin to new destination with a reasonable charge for the extra service performed, where contents of car remained unchanged, change of destination or route did not involve an out of line haul, and if request was made in reasonable time, was unlawful and unreasonable; and (2) that the charges collected were unreasonable to the extent they exceeded those which would have accrued at the joint through rates, plus a maximum additional charge of $5.00 per car for extra service incident to reconsignment. Reparation awarded. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523.

(o) Complainant shipped from Poley, Ala., a car of lumber consigned in the first instance to Altoona, Pa., but reconsigned in transit to Nicholson, Pa. The reconsignment was effected by the L. &. N. R. R. Co. at Cincinnati, Ohio, and charges were collected at Nicholson upon basis of the combination of rates to and from that point. HELD, that upon the facts and for the reasons stated in Central Commercial Co. v. L. & N. R. R., 27 I. C. C., 114, 22 I. C. C., 164, reconsignment should have been permitted upon basis of the joint through rate contemporaneously in effect from Poley to Nicholson, plus $5 for services rendered in effecting the reconsignment. Reparation awarded. Rayner & Parker v. L. & N. R. R. Co., 33 I. C. C. 595.

(p) Reparation awarded on lath from Edentown, N. C., to Pocomoke City, Md., thence reconsigned to Crisfield, Md., on basis of rate for through haul plus $5 for reconsignment. Cranston Lumber Co. v. N. S. R. R. Co., Unrep. Op. A-779.

(q) Cancellation of provision for

absorption of reconsignment charges on grain at Kansas City, Mo., found not justified. Reparation awarded. Brodnax & McLiney v. St. L. & S. F. R. R. Co. Unrep. Op. A-848.

IV. TARIFFS AND PUBLICATION.

See Tariffs.

§4. Necessity of Publishing.

(a) A reconsignment rule should clearly state, if that be its intent, its limited application to shipments originating at points upon the carrier's line. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 625.

(b) The Commission finds no authority in the law for the assertion that reconsignment to a new destination on basis of the through rate is a necessary incident of stoppage in transit. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 530.

(c) Charges on car of potatoes from Cloverly, Colo., to Dalhart, Tex., and reconsigned thence to Tucumcari, N. M., not found unreasonable, reconsignment not being authorized by tariffs. Caudle v. U. P. R. R. Co., Unrep. Op. A-872.

(d) Failure of C. & N. W. Ry. to provide tariff authority for reconsignment of shipments of coal to points short of original destination found to have resulted in unreasonable charges. Reparation awarded. Sunderland Bros. Co. v. C. & A. R. R. Co., Unrep. Op A-875.

§5. Construction in General.

(a) A rule providing for free reconsignment at junction points to connecting lines where no through rates are in effect to points on such connecting lines via such junctions, is inapplicable where through rates are in effect to the destination of a shipment. Charles Becker v. M. P. Ry. Co., 28 I. C. C. 645, 651.

(b) Where a tariff applying to interstate traffic provides for the privilege of reconsignment at a certain point, it is not within the reason or intendment of this rule that a shipper shall consign his goods to the reconsigning point at an intrastate rate and reconsign therefrom on an interstate rate, in order to defeat the lawfully published through rate from original point of shipment to final destination; and such practice is unlawful. Less Carload Freight Reconsignment Privileges, 32 I. C. C. 85, 86.

(c) Reconsignment understood to include change of consignee as well as change of destination. Jung & Sons Co. v. L. & N. R. R. Co., 31 I. C. C. 455, 457.

(d) While reconsignment is, as a general rule, associated with the application of a specific through rate, which is often less than the sum of the intermediate rates, in and out of the point of original destination, and largely derives its value from that fact, this rule is not without exception. Not infrequently shipments are reconsigned on basis of the sum of the local rates, under authority of tariffs which provide for reconsignment at the through rate, and this may be done without violation of such tariffs for the reason that no specific through rate from the point of origin to the new destination is in effect. The through rate in such cases is made by combining two or more rates instead of by the use of a single rate factor, but the reconsignment rules and charges apply to the same extent as if a specific through rate were in force. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 527.

(e) There is no possible construction whereby the rule may be held to justify a practice the sole purpose of which is to defeat the through rate. Less Carload Freight Reconsignment Privileges, 32 I. C. C., 85, 86.

(f) Complainant ordered a shipment from Roosevelt, Tenn., to Dell Rapids, S. Dak., reconsigned to Sioux Falls, S. Dak., provided the lowest rate between point of origin and final destination would apply. This could not lawfully be done under the tariff in effect, though defendant's agent had erroneously advised complainant to the contrary. The shipment was transported to destination and the higher lawful charges collected. HELD that the case did not differ materially from one involving a misquoted rate. Complaint dismissed. Reeves Coal Co. v. C. M. & St. P. Ry., 34 I. C. C., 122.

§5½. Notice.

See Notice.

(a) Reconsignment charges assessed on cars to which no notice was given prior to arrival of cars should be refunded. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 659.

(b) Notice should be given con-

signees before arrival of cars at destination, and if disposition is not made, a charge of $2 per car for reconsigment should be assessed. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 656.

(c) Shipment had reached its original destination before reconsignment instructions were received, held reconsignment charges were not unreasonable. Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A462.

§6. Retroactive Application.

See Facilities and Privileges, §19.

(a) Tariff filed subsequent to movement permitting reconsignment on basis of joint through rate cannot be applied retroactively. Gamble-Robinson Commission Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A345.

V. PROCEDURE AND REPARATION.

See Procedure; Reparation.

§7. In General.

(a) Through error of defndant's agent by not knowing correct rate when consignor asked for the shipment to be diverted in transit, the complainant is entitled to reparation. Welisch & Co. v. St. L. S. W. Ry. Co., Unrep. Op. A423.

(b) Joint through rate on whiskey from Chicago to Los Angeles would have applied had reconsignment been effected before shipment was delivered to Arizona Eastern as tariff provided for free reconsignment on that basis. Reparation awarded. Goodhart-Hartman Co. v. S. P. Co., Unrep. Op. A-781.

(c) Order to "divert" mining timbers to Gila, Ariz., en route from Blinville, Cal., to Bisbee, Ariz., was given after shipment had passed Gila. Back-haul charges not found unreasonable. Calumet & Arizona Mining Co. v. S. P. Co., Unrep. Op. A-825.

(d) Delay in furnishing reconsigning instructions not found to be due to any fault of carrier, and demurrage charges on cedar posts from Shelbyville, Tenn., to Grand Island, Nebr., not found to have been unlawfully collected. Newett v. C. B. & Q. R. R. Co., Unrep. Op. A-878.

(e) On carload of lumber from Burton, Ia., to Waltham, Mass., reconsigned at Jewett, Ill., connecting carrier refused to consent to application of joint through rate of 39 cents because its division would be less, and combination rate of 45 cents was charged. HELD, unreasonable and reparation awarded. Fullerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-895.

§9. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) Reconsignment is, under the Act, a service which the carrier may be properly expected to furnish. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 655.

(b) Reconsignment and diversion on the basis of the through rate from the point of origin to new destination, with a fair charge for extra services performed, are reasonable practices, and denial thereof is unreasonable and unlawful; and the Commission has power, in its discretion, to require their establishment. Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 652.

(c) The Commission has power, in its discretion, to require the establishment of reconsignment and diversion on basis of the through rate from the point of origin to the new destination, with a fair charge for the extra services performed. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 526.

(d) The contention that the Commission has no power to require carriers to initiate the practices of diversion and reconsignment rests upon the theory that these practices exist only where the carriers hold themselves out to perform the service on basis of the specific through rate, but the term, when properly understood, bears no such restricted meaning. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 526.

REDUCED RATES.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§2. Power to suspend.
II. LEGALITY OF REDUCED RATES.
§2½. In general.
§3. Charitable institutions or fairs.
§4. Government material.
§5. Returned or old shipments.
§6. Company material.
§6½. To encourage markets.
III. TARIFFS AND PUBLICATION.
§7. In general.

CROSS REFERENCES

See Absorption of Charges, §3 (c); Advanced Rates, §5 (2), (w), (hh); Discrimination, §2; Loss and Damage, §9 (q); Reparation, §7½ (c), §16; Through Routes and Joint Rates, §1 (a).

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) Authority to reduce the unreasonable through rate by reducing the excessive proportional rate is beyond question. Malt Rates to New Orleans, La., 30 I. C. C. 587, 590, 591.

§2. Power to Suspend.

See Interstate Commerce Commission, §11.

(a) The Commission would not be warranted in permanently suspending an otherwise unobjectionable tariff on the ground that it might, if allowed to become effective, be followed by reductions in rates to other points or by other lines. Export Rates on Grain and Grain Products, 31 I. C. C. 617, 622.

(b) It is the custom of the Commission to suspend new rates when it appears that they will create unlawful discrimination. Some tariffs providing for reduced rates to many points have been suspended solely upon the ground of discrimination. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 420.

(c) The Commission is authorized under the act to order a reduction in rates only when it is made to appear that they are unjust, or unreasonable, or unjustly discriminatory, or unduly preferential. Complainants must, therefore, prove the issues that they raise by competent testimony or make out a prima facie case sufficiently clear and strong to require the Commission in the public interest to enter upon an investigation of its own to ascertain the merits of the complaint. Rosenblatt & Sons v. A. A. R. R. Co., 33 I. C. C., 324, 329.

II. LEGALITY OF REDUCED RATES.

See Legality.

§2½. In General.

(a) That an industry is not in a prosperous condition or that the cost of assembling its raw material may be greater than that of its rival, is not of itself a sufficient reason for ordering a reduction in rates. Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502.

(b) Where a rate is reduced it may often result that annual contracts predicated on the continuance of the higher rate being unexpected gain to one party to the contract. These unexpected increments of loss or gain ought not to preclude the establishment at the earliest practicable date of rates that are just and reasonable. Malt Rates to New Orleans, La., 30 I. C. C. 587, 591.

(c) The Commission considered a proposed reduction from 21c to 20c in the rate on cement in carloads from Duluth, Minn., to North Dakota points on the M. C. R. R. and increases of from 21c to 23c from Mason City, Ia., and from 22c to 24c from Des Moines, Ia., to the same destinations. The reduction to 20c in respondent C. M. & St. P. Ry.'s rate from Duluth was made to meet the rate of the N. P. Ry., the distance to Jamestown, N. Dak., being 349 miles via the N. P. Ry. and 547 miles via the C. M. & St. P. Ry. The distance from Mason City to Jamestown was 465 miles. HELD, that the rates proposed had been justified. Order of suspension vacated. Cement Rates to Stations on the M. C. R. R., 32 I. C. C. 540.

§3. Charitable Institutions or Fairs.

(a) Refusal to return free of charge property exhibited at National Dairy Show Association in Chicago, while returning free of charge property exhibited at state fairs and expositions at Syracuse, N. Y., and Trenton, N. J., not in violation of section 3. Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406.

(b) While the Act authorizes the free transportation of property for exhibition purposes, it does not require the carriers to grant such transportation. Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406, 408.

(c) Charges for return to Chicago of a motor truck exhibit at Kansas City not found unreasonable or unjustly discriminatory. Mogul Motor Truck Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-797.

(d) Denying of free return to Chicago, Ill., of a motor truck exhibited at

Kansas City, while granting privilege to other articles, including fire-engines, ladder trucks, etc., not found unreasonable or unjustly discriminatory. Mogul Motor Truck Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-797.

(e) In regard to carriage, storage or handling of property free or at reduced rates to or from fairs and expositions for exhibition thereat, carriers may grant or deny free transportation provided unjust discrimination under section 2 or undue preference or prejudice under section 3 does not result C. B. & Q. R. R. Co., Unrep. Op A-797.

§4. Government Material.

(a) So far as the laws administered by the Commission are concerned, the right of carriers to transport government property free or at reduced rates is elective and not mandatory. No duties are delegated to the Commission under, nor can it assume to interpret or determine the purpose or scope of, the so-called public highways act or of statutes under which rights and privileges may be reserved to the United States in return for subsidies in lands or bonds or loan of credit. United States v. U. P. Ry. Co., 28 I. C. C. 518, 524.

(b) Government not entitled to special consideration in the administration of section 15 as to through routes. U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 523.

(c) In so far as the laws administered by the Commission are concerned, the right of carriers to transport government property free or at reduced rates is elective and not mandatory. U. S. v. U. P. R. R. Co., 28 I. C. C., 518, 524.

(d) The United States government sought to compel the U. P. and Oregon Short Line railroads to establish through routes and joint rates on shipments of freight by the government, between Chicago, Rock Island and Quincy, Ill.; Milwaukee, Manitowoc and Superior, Wis.; St. Paul and Duluth, Minn.; Clinton and Burlington, Ia.; St. Louis, Kansas City and St. Joseph, Mo.; Atchison and Ft. Leavenworth, Kan., and points taking the same rates on the one hand, and stations on the Oregon Short Line, applicable via the N. P., and A. T. & S. F. Rys., and other Western railroads. Between all points referred to and Oregon Short Line stations, there were through routes and joint rates applicable via U. P. R. R. eastern terminals. It was not contended that such service was unsatisfactory, but merely that refusal to accord through routes and joint rates to the other carriers gave the U. P. R. R. a monopoly of traffic, deprived the government of land-grant deductions reserved to it by statute, and defeated the spirit and purpose of the so-called public highways Acts. Certain of the lines between the points mentioned and the eastern termini of the U. P. R. R. are land-grant roads, the net rates of which are equalized by the other carriers between the points. The U. P. R. R. not being a land-grand road, the through rates via U. P. R. R. routes are subject to land-grant deductions only as to proportions accruing east of such termini, while the N. P. Ry. is subject to deductions westward to Logan, Mont., and the A. T. & S. F. R. R. from Atchison, Kan., to the Colorado line. The through rates by the latter lines are combination rates, and being higher than the proposed joint rates, the government's proportions are higher, though in many cases the charges are lower than corresponding charges to private parties via U. P. R. R. through routes. From Duluth via the N. P. R. R. through Silver Bow or Butte, Mont., to Pocatello, Idaho, on the Short Line is 127 miles less than via the U. P. R. R. route; from all other points to Pocatello the U. P. R. R. routes are shorter than proposed N. P. Ry. routes, in one case by 17 miles, in others ranging from 243 to 700 miles. The distances via existing U. P. R. R. routes were less in every case than proposed A. T. & S. F. Ry. routes, the differences ranging from 113 to 299 miles. Practically all government shipments over the U. P. R. R. to Oregon Short Line points pertained to the Reclamation Service, as to which the government had a contract entitling it to the lowest commodity, terminal, tariff, local and through class rates, affording it lower rates than would obtain under land-grant deductions. The Oregon Short Line is owned by the U. P. R. R., and they are operated under a common management. HELD, that to require the Oregon Short Line to establish through routes with the N. P. Ry. or the A. T. & S. F. Ry. would be to entirely exclude the U. P. R. R. from participation in the traffic, contrary to

Section 15 of the Act. The Commission is not empowered to require carriers to grant the United States free transportation or other rights or concessions other than those afforded the general public. Complaints dismissed. United States v. U. P. Ry. Co., 28 I. C. C. 518.

(e) The State of Maryland endeavoring to improve its roads not entitled to reduced rates on crushed stone. Rates on Crushed Stone, 30 I. C. C. 22, 24.

(f) Rate of $2.60 on soft lump coal from Buck, Okla., to Fort Riley, Kans., found unreasonable to the extent that it exceeded $2.25. No coal moves to Fort Riley except for use of Government. McAlester Fuel Co. v. M. K & T. Ry. Co., Unrep. Op. A-839.

(g) Rate of $2.60 per net ton on soft lump coal from Buck, Okla., to Fort Riley, Kans., found unreasonable to extent it exceeded $2.25 which rate applies from all points in the group to Fort Riley. Reparation awarded. McAlester Fuel Co. v. M. K. & T. Ry. Co., Unrep. Op. A-839.

(h) Carriers have the right under section 22 of the act to extend special rates to the government, but the Commission cannot compel the carriers to do solely for the United States government what they may not be required to do for other shippers similarly situated. United States v. P. R. R. Co., Unrep. Op. A-957.

§5. Returned or Old Shipments.

(a) Complainant protested against the first-class rate of 91c per 100 lbs. on a carload of damaged overalls and another of damaged gloves, from Dayton, O., to Superior, Wis., as unreasonable, contending that 45c would have been a just and reasonable rate. The goods were water-soaked and muddy, caused by floods at Dayton, and the laundries at that point not being able to promptly cleanse and fit them for the market, were shipped to Superior without inspecting or sorting, and there laundered. Three-fourths of the overalls and two-thirds of the gloves were thus made salable. There was no commodity rate applicable to damaged goods. HELD, there is no fixed standard by which the value of such commodities can be satisfactorily determined, and it would be difficult to establish a rate such as is asked without affording an easy and convenient means for misbilling and discrimination. Complaints dismissed. E. Danciger v. P. C. C. & St. L. R. R. Co., 29 I. C. C. 99.

(b) Minimum charge rule applicable to returned empty beer packages not found unreasonable. Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 688.

(c) Shipper inserted in bill of lading wrong car number. Returned upon discovery of the error. Carriers collected the published rate from points of origin to destination and return. Not in violation of act and complaint dismissed. Swedish Iron & Steel Corporation v. Bush Terminal Co., Unrep. Op. A323.

(d) Carriers may establish reduced rates for the return of articles damaged in transit, but in this case the goods were not damaged, but refused by consignee because of imperfection in making up and not entitled to reduced rates on returned shipment. Diana Paper Co. v. N. Y. C. & H. R. R, R. Co., Unrep. Op. 409.

(e) Rate of outbound movement is not a proper measure by which to determine the reasonableness of rates on return shipments. Diana Paper Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A409.

(f) Classification rating on iron castings as applied to shipments of returned iron shipping blocks for bracing automobiles in transit, not found unreasonable. Perrine Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-730.

(g) Complainant attacked defendant's refusal to permit the inclusion of second-hand automobiles in carload shipments of emigrant movables from Webster, S. D., to Rees, Ariz., as unreasonable. Second-hand automobiles moved in large numbers and their inclusion in the mixture might lead to manipulation. They generally required special equipment with large or staggered doors, and could not be loaded into ordinary cars. HELD that defendant's refusal to include automobiles in the ratings on household goods was not unreasonable. Complaint dismissed. Ochsenreiter v. A. T. & S. F. Ry., 33, I. C. C., 518.

§6. Company Material.

See Discrimination, §6.

§6½. To Encourage Markets.

(a) The Commission considered the

proposed withdrawal of the interstate commodity rate of 13c on shipments of onions from Orange County, N. Y., through Jersey City, via the Erie R. R. to its Duane St. station in New York City, and the establishment in lieu thereof of a 10c rate to its Pavonia Avenue station in Jersey City. The Erie handles most of the onion traffic for the New York market, principally from Orange County, from August to December, resulting in serious congestion at the Duane St. station and frequent embargoes, thus causing delays in other traffic. The Pavonia Avenue station adjoins the ferry entrance, and respondent maintains a 10-minute ferry service, the trip between the two stations consuming but eight minutes. Under the suspended tariff 3c is allowed for drayage and ferryage on traffic actually carted across the Hudson River to deliveries on Manhattan Island. The tariff applies to onions from western producing points as well as to those shipped as indicated. The Erie R. R. handles annually 1,200 cars of onions, about one-half of which comes from Orange County. HELD, that the tariffs under suspension should be permitted to go into effect and respondent be given an opportunity to try the experiment of establishing the market for onions at Jersey City. Onion Rate to New York, N. Y., 30 I. C. C. 528.

III. TARIFFS AND PUBLICATION.

See Tariffs.

§7. In General.

(a) Reductions fall most heavily upon long-haul traffic. In re Express Rates, 28 I. C. C. 132, 147.

REFRIGERATION.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. DUTY TO FURNISH.
§2. In general.
§3. Incidental services and charges.
§3½. Icing and re-icing.
III. REASONABLENESS OF CHARGES.
§4. In general.
IV. TARIFFS AND PUBLICATIONS.
§4½. In general.
§5. Obligation to file.
§6. Construction in general.
V. WEIGHTS.
§7. Minimums.
VI. REPARATION.
§8. In general.

CROSS REFERENCES

See Accounting, §5 (e); Additional Charges, (v); Allowances, §8 (4½), (e); Cars and Car Supply, §28 (c); Evidence, §17 (k), §22 (c), §47 (i); Precooling; Reparation, §16 (4h).

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) Under Section 15 of the Interstate Commerce Act, as amended by the Hepburn Act authorizing the Commission to determine whether rates, or practices affecting rates, are unreasonable, to determine what practice in respect to transportation is just, and to require the carriers to conform to those prescribed by the Commission, that body has power to cancel a tariff withdrawing a precooling privilege previously recognized by it and to require the carrier to conform to its order establishing a certain charge on pre-cooled shipments. A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 296; 232 U. S. 199; 58 L. ed. —.

(b) The law does not contemplate that an investigation by the Commission as to proposed increases in refrigeration charges should embrace within its scope affirmative relief to a complainant unless the demands of the case are established beyond peradventure. Refrigeration Rates from New Orleans, 31 I. C. C. 637, 638.

II. DUTY TO FURNISH.

§2. In General.

(a) Under Section 1 of the Hepburn Act, the carrier has the exclusive right to furnish such refrigeration as may be required in connection with the transportation of fruits; but this does not mean that because a carrier has ice on hand it can compel the shipper to have it refrigerated, where the shipper prefers to pre-cool his fruit and have it forwarded under ventilation only. A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 294; 232 U. S. 199; 58 L. ed. —.

(b) Water lines required to transport dairy products and furnish reasonable re-

frigeration facilities therefor. Lake-and-rail Butter and Egg Rates, 29 I. C. C. 45, 51.

(c) Volume of traffic considered in determining propriety of compelling water lines to install refrigeration equipment. Lake-and-rail Butter and Egg Rates, 29 I. C. C. 45, 51.

(d) A tariff that offers a protected service, in special equipment for shipments of potatoes in winter at the risk of the carrier for weather damages and at the same time permits the shipper, at a lower rate and at his own risk, to furnish his own protection, not found unlawful or unreasonable. Protection of Potato Shipments in Winter, 29 I. C. C. 504.

(e) Carrier should not be required to furnish special refrigerator car unless the carrier be allowed to protect its revenues by requiring a substantial loading sufficient adequately to utilize its equipment. Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349, 350.

(f) Where the railroad company is not associated in interest with a refrigerating company operating over its own line, and the railroad company performs part of the refrigeration service, such as the haulage of ice for refrigeration, and yet turns over the entire revenue from the refrigeration to the refrigerator company, there is at least an incongruity in the situation. It would seem that this might well go to establish the charge that the railroad company in this regard is not properly conserving its revenues. R. R. Commission of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 21.

(g) Refrigerator car most satisfactory car for movement of potatoes. Rental Charges for Insulated Cars, 31 I. C. C. 255, 256.

(h) Although the Northern Pacific has 3,500 refrigerator cars of its own, 95 per cent of the cars used by it in potato loading are furnished by connecting lines. Rental charges for Insulated Cars, 31 I. C. C. 255, 256.

§3. Incidental Services and Charges.

See Additional Services and Charges; Special Rates and Devices; Switch Tracks and Switching, §5.

(a) It appears from the decisions of both the Commission and the Supreme Court that compensation for hauling ice for refrigeration service should be included in the refrigeration charge. Such a charge was not included by the Commission in establishing rates for pre-cooled shipments for the reason that under the peculiar facts of the pre-cooled fruit movement, a revenue applicable to this item of ice haulage existed in the freight rate. R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 21.

(b) Charge for special car for deciduous fruit should not be included in additional charge for refrigeration. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C., 17, 19.

(c) Item of $5 per trip for damage to ice bunkers is ample to cover excess damage to other parts of car. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C., 17, 25.

(d) Item of extra switching should be included in the refrigeration charge. R. R. Comm. of California v. A. G. S. R. R. Co., 32, I. C. C., 17, 20, 26.

(e) A charge for use of special refrigerator car should not be included in the additional charge for refrigeration. R. R. Comm. of California v. A. G. S. R. R. Co., 32, I. C. C., 17, 19.

(f) Item of ice haulage and also of extra switching should be included in the refrigeration charge, even though practically entire movement is under refrigeration rather than part under ventilation and part under refrigeration. R. R. Comm. of California v. A. G. S. R. R. Co. 32, I. C. C., 17, 20.

(g) Additional expense for precooling service should be charged only to shipper who requests the service. R. R. Comm. of California v. A. G. S. R. R. Co. 32, I. C. C., 17, 22.

(h) The carriage of refrigeration ice is certainly a source of expense, and, unless included in the transportation rate is a part of the cost of refrigeration. Montrose & Delta Counties Frt. Rate Asso. v. D. & R. G. R. R., 34 I. C. C. 400. 407.

(i) Shipments re-iced in transit require more refrigerating materials, the haul of greater total weights of ice, extra switching to and from ice houses, more supervision, and involve greater risk of insufficient refrigeration than shipments that are not re-iced. The service is therefore more costly than ordinary refrigeration service and justifies

an additional charge. Westbound Transcontinental Refrigeration charges, 34 I. C. C. 140, 143.

§3½. Icing and Re-icing.

(a) The mere fact that an icing charge exceeds the actual cost of the ice is not sufficient to justify an inference of unreasonableness; since on a service not strictly a part of the transportation the carrier is not limited in its charge of the mere cost of such service, but may rightfully make a reasonable profit thereon. Geraty v. A. C. L. R. R. Co., 211 Fed. 227, 230.

(b) The term "refrigeration charge" is distinguished from the "shippers' icing" plan in that the former is a stated charge applied to a unit, as per car, per package, or per 100 lbs., from loading station to destination or a considerable part of the haul, whereas by the latter the charge is made per ton under instructions from shipper as to amount of ice to be used en route. Refrigeration Rates from New Orleans, 31 I. C. C. 637,

(c) Icing causes additional expense in the nature of extra switching and train delays. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 516.

(d) Complainant attacked the rules covering the icing of perishable freight in refrigerator cars, which require shippers to state at what point cars shall be re-iced. The tariff contains a list of points at which cars may be re-iced. The tariff permits shipper to give instructions as to the extent to which cars may be re-iced, etc. Complainant asks that the rule be amended to give shippers the option of specifying points at which cars shall be re-iced or simply to instruct carriers to keep cars iced to destination. The traffic involved consists chiefly of apples and peaches moving from Northern New York to Providence. Other lines, it is shown, provide for carriers keeping cars iced to destination. The need for ice varies with its condition as to ripeness, etc., when loaded and the method of loading. Carriers' employees at icing stations ordinarily are not familiar with these matters. Similar rules to the one in question are in effect on most of the trunk lines in Canada, and the rules in question, or similar ones, on defendant's lines have been in effect since 1903. Defendant's trains move on regular schedules which are printed and available to the shipper. In case of delay, all perishable carload shipments are iced when it appears necessary, regardless of bill of lading instructions. HELD, the responsibility rests upon defendant to comply with shipper's instructions under ordinary circumstances and to exercise all reasonable precautions in emergencies. There is no evidence that defendant has failed to meet these obligations. It cannot be expected to substitute the judgment or discretion of its employees for the more expert knowledge of the shipper as to the requirements of particular shipments. If complainants seek only the right to give instructions that cars shall be iced at certain stations or that they be kept iced to destination, they already have the right under the present rules by specifying any regular icing stations or by inserting in the bill of lading the notation, to re-ice to full capacity at all regular icing stations. The rule in question is not unreasonable or unjustly discriminatory. Providence Fruit & Produce Exchange v. R. R. Co., 33 I. C. C. 294.

(e) In the matter of re-icing perishable carload freight in transit it cannot be expected that the carrier will substitute the judgment or discretion of its employees for the expert knowledge of the shipper in determining to what extent and at what points cars should be re-iced, which would be the case if carriers were required to observe shippers' instructions simply to re-ice when necessary. Providence Fruit & Produce Exchange, 33 I. C. C. 294, 296.

III. REASONABLENESS OF CHARGES.

See Reasonableness of Rates.

§4. In General.

(a) The Commission considered the proposed substitution by the M. P. Ry. of a stated refrigeration charge of $40 per car in lieu of "shipper's icing" privilege, on shipments of fruits and vegetables from Colorado stations to Kansas points. The points of origin involved were stations on the D. L. & N. W. R. R., D. & S. L. R. R., and G. W. R. R., short lines radiating from Denver, none of them exceeding 50 miles in length. There being no icing facilities at these points, empty refrigerator cars were sent to Denver and their bunkers filled with ice the evening before loading, under directions by the shipper. The car was then sent to the point of origin of shipment, loaded, and bill of lading executed by the shipper bearing his instructions as to

icing in transit. Re-icing stations were located at Denver and Pueblo, Colo., and Hoisington, Kan., and the icing service rendered by the carrier at $2.50 per ton for ice actually used. The "shipper's icing" plan resulted from a condition existing at Missouri River points a number of years since, where natural ice was available at a low cost. Competition gradually extended the plan westward, until the icing points in question were included. The carriers contended that the plan was objectionable because: (1) There was no uniformity as to re-icing required by different shippers, either as to amount of ice required or stations at which re-icing was desired; (2) refrigerator cars under the shipper's icing plan were necessarily intermingled and confused with cars from other points moving under stated refrigeration charges, and like the latter, filled to capacity; (3) instructions as to re-icing were often indefinite and ambiguous, leading to frequent controversy; (4) the small lines concerned had no refrigerator cars of their own, and are compelled to pick up what stray cars they can to comply with the plan; and (5) competing carriers can, by failing to report icing, or by reporting only in part, deflect business to their lines. Stated refrigeration charges are in use in every other state in the Union, and even between the points in question a refrigeration charge of $40 per car is in effect in tariffs of other carriers. Were the commodities shipped between the points in question under stated charges, cars would be iced and re-iced to the amount of from 10 to 12 tons, at Denver, Pueblo and Hoisington. The price of ice was $2.50 at Denver, and from $3.50 to $4.00 at Pueblo and Hoisington; the cost of the necessary ice being from $28.75 to $33.25. Besides this, the carrier's expense included maintenance of cars, repairs, inspection, liability for damage to contents of car, and other overhead expenses. A portion of the tariff under suspension also provided for a refrigeration charge of $25 per car from points north of Denver to destinations in Colorado, but this charge was fixed by the state railroad commission. HELD, that the objections to the "shipper's icing" plan were of substantial merit, and the service should be furnished at a stated charge; and the $40 charge proposed appears reasonable. Advance allowed. Refrigeration Charges on Fruits and Vegetables, 29 I. C. C. 653.

(b) A higher loading being possible under ventilation than under refrigeration, the possible reduction in per-car earnings in the case of the refrigerated shipments will warrant a higher rate. Pacific Fruit Exch. v. S. P. Ry. Co., 31 I. C. C. 159, 164

(c) The Commission considered the proposed charge of $5 per car per trip for the use of a refrigerator car in the movement of potatoes from points of origin in Minnesota and neighboring states. The haul of the initial carriers was short, averaging 60 to 70 miles, and they did not possess sufficient refrigerator cars to care for the movement, and hence were obliged to depend on their connections for equipment. But it was not possible always to secure sufficient cars in this way, and they could be obtained of private car lines only for $5 per trip in addition to the usual mileage allowance. The charge of $5 is assessed where refrigerator cars are used in moving potatoes from Michigan and Maine. The rates on potatoes were fixed at a time when potatoes moved in box cars during the fall, but at the time of hearing they moved largely during the winter and in refrigerator cars. HELD, the proposed charge was reasonable. Rental Charges for Insulated Cars, 31 I. C. C. 255.

(d) The Commission considered a proposed increase of 5c per 100 lbs., minimum 10,000 lbs., in the less-than-carload refrigeration charges from New Orleans and other points on the I. C. R. R. and Y. & M. V. R. R. to Chicago. From groups A, B and C, extending, respectively, from Kenner, La., to Aberdeen Junction, Miss.; from Durant to Michigan City, Miss., and from Grand Junction, Tenn., to Wickliffe, Ky., the proposed minimum charges were, respectively, $30, $27.50 and $25, for average distances of 824, 641 and 440 miles. In 1913 the average loading of I. C. R. R. cars was 12,050 lbs.; cost of ice per car $34.93, and average refrigeration revenue $26.64—which an increase of 5c would raise to $31.97. HELD, that the proposed increase was not unreasonable. Order of suspension vacated. Refrigeration Rates from New Orleans, La., and Other Points, 31 I. C. C. 637.

(e) Armour car lines furnish refrigerator cars at 55 cents per car day.

Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 516.

(f) A single instance cited to show the cost of icing a shipment for transportation is insufficient in the opinion of the Commission to form the basis of any conclusion as to the comparative cost upon the entire volume of traffic or even that of a single shipper for the shipping season. Kenner Truck Farmers' Assn. v. I. C. R. R. Co., 32 I. C. C. 1, 10.

(g) There can be no doubt that a greater service is rendered in icing cars moving for a longer distance than for a shorter, and the division of a carrier's line into groups, from which different charges are applicable, is justified in principle. Kenner Truck Farmers' Assn. v. I. C. R. R. Co., 32 I. C. C. 1, 8.

(h) An icing charge duly provided for in a tariff, having been increased subsequent to January 1st, 1910, the burden of proof to show, in complaint brought by a shipper, that the increased charge is just and reasonable is upon the carrier. Kenner Truck Farmers' Assn. v. I. C. R. R. Co., 32 I. C. C. 1, 8.

(i) Since refrigeration is a service separate from, and additional to, ordinary transportation, for which a separate and additional charge is imposed, into this charge should enter all the elements of cost which are incurred solely in furnishing the refrigeration service; that is, the elements which are additional to the service without refrigeration. R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 19.

(j) It is essential to correct rate making, as it is to a just determination of the reasonableness of the different charges whenever they may be questioned, that there be an agreement and a fixed practice as to the allocation of the constituent elements of cost between transportation service and refrigeration service. Under such a theory the item of ice haulage and also of extra switching should be included in the refrigeration charge. This is true, even though practically the entire movement may be under refrigeration. R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 19.

(k) A charge for the use of special refrigerator car should not be included in the additional charge for refrigeration, since this charge is included in the freight rate applicable to shipments alike moving in refrigerator cars under refrigeration and those moving in such cars under ventilation. R. R. Com. of California v. A. G. R. R. Co., 32 I. C. C. 17, 19.

(l) The argument that the service of hauling ice for refrigeration purposes is not performed by the refrigerator company but by the railroad company does not establish that this item should not be included in the refrigeration charge; the railroad company is responsible for both the transportation and the refrigeration; and the reasonableness of the refrigeration charge should be determined exactly as though the service was rendered by the railroad company itself, irrespective of how the railroad company may divide the total revenue with the refrigerator company. R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 20.

(m) Where it is sought to show that refrigeration charges on certain traffic are unreasonable, and comparisons are made with the refrigeration charges on other traffic, there must be a sufficient showing of similiarity of transportation conditions to warrant a finding of undue discrimination. Pacific Fruit Exchange Co. v. S. P. Co., 32 I. C. C. 48, 49.

(n) Complainant attacked the refrigeration rates on deciduous fruits shipped from California points to points in other states, the freight rates on deciduous fruits from California points to points in the states of Alabama, Florida, Georgia, South Carolina and Tennessee and the present minimum weight of 26,000 lbs. on deciduous fruits from California points. Very little evidence was offered as to the unreasonableness of the refrigeration rates, complainant relying upon comparisons with the rates from Oregon and Washington and referring in their brief to Pacific Fruits Exchange v. S. P. Co., 32 I. C. C. 48, heard at the same time, for the showing that the refrigeration rates were excessive. HELD, following the opinion in R. R. Com. of Cal. v. A. G. S. R. R. Co et al, 32 I. C. C. 17, the rates attacked were not unreasonable. Rates to the Southeast—While the complaint contained a blanket attack on the rates applying into five southeastern states, there was very little evidence to sustain this feature. Reliance was placed in a comparison between the present rates, which varied from $1.30 to $1.71 per 100 lbs., and the blanket rate of $1.15 now applying to

New York and common points and other destinations north of the Ohio River. Reference was also made to efforts of efforts of the southeastern lines and the western lines to agree upon reductions in the rates to the southeast. HELD, the evidence was not sufficient to justify the Commission in prescribing the extensive reductions sought. Minimum Weights.—The evidence submitted by complainant had to do chiefly with prices received for the top tiers of fruit loaded in the car for year 1913, as compared with those received for the lower tiers, reports of selling agents as to the condition of the fruit and the testimony of witnesses as to the deterioration of fruit in transit. The most significant testimony as to deterioration in transit was given by a witness who offered the result of inspections made in 1911 of shipments of grapes to the Chicago market. This inspection showed that 38 per cent arrived in good condition; 28 per cent slightly decayed; and 34 per cent were in bad condition. Witness stated that from his observation the causes of the unsatisfactory result were: (1) the extremely perishable nature of perishable grapes; (2) the excessive minimum and long haul; (3) the extremely high temperature while in transit; (4) the extremely rough handling by switching at eastern terminals. HELD, in accord with conclusions in the California Commission case, 32 I. C. C. 17, the showing made did not demonstrate that the 26,000 lbs. minimum was unreasonable. California Fruit Growers Assn. v. A. G. S. R. R. Co., 32 I. C. C. 51.

(o) $5 per car trip for use of refrigerator cars in movement of potatoes, not found unreasonable. Rental Charges on Insulated Cars, 31 I. C. C. 255.

(p) Average refrigeration revenue is less than average cost of ice. Refrigeration Rates from New Orleans, 31 I. C. C. 637, 639.

(q) Little difference in cost of icing car for less-than-car-load than for carloads. Refrigeration Rates from New Orleans, 31 I. C. C. 637, 639.

(r) Complainant attacked the refrigeration charge of $70 per car on salted or pickled fish, C. L., from San Francisco and California points to New York and other eastern destinations as unreasonable. The freight rate was $1 per 100 lbs. when under refrigeration and 85c per 100 lbs. when not under refrigeration. The latter rate applied only on fish which had been dry cured or so heavily salted as not to require refrigeration while the other rate applied on fish known as "mild cured" which could be shipped wih safety only under refrigeration. The conditions surrounding the transportation of the two kinds of fish were materially different in that ordinary box cars could be used in the case of dry cured fish and this fish could also move by water, whereas neither condition was true as to the other kind. The earnings of the carrier were less under the dollar rate with the published minimum of 30,000 lbs. than under the 85c rate with its minimum of 40,000 lbs. The refrigeration charge on deciduous fruits between the points involved was $85 per car of 26,000 lbs. HELD, the refrigeration charge assessed was reasonable and the freight rate of $1 did not cover the refrigeration cost. G. W. Hume Co. et al. v. Southern Pacific Co. et al., 33 I. C. C. 126, 127.

(s) The Commission considered proposed per car charges for transportation of perishable commodities iced by consignor and delivered to carrier with instructions not to re-ice in transit from Missouri River territory to Pacific coast and intermountain territories; also increased charges for reicing in transit between the same points. The principal commodities affected were sweet pickled meats; dry salted meats, lard, beer, butter, eggs, and poultry. Charges Where Shipments are Not to be Re-Iced: A charge of $17.50 was proposed; made up of $12 for hauling the ice bunkered in the cars, $3.50 for repair bunkers, and $2 for supervising shipments not reiced; but these services had always been rendered without specific charge, being included in the freight rates. HELD that respondents had not justified the proposed charges. Holding in Arlington Heights Fruit Exch. v. S. P. Co., 23 I. C. C. 267, distinguished. Charges for Reicing in Transit: The existing charges on shipments from Missouri River to Pacific coast, Spokane, and Montana territories were $15, $15, and $13 per car; proposed charges $25, $20, and $15, respectively. It appeared that on shipments to the Pacific coast the average cost of extra ice furnished was $15.52 per car; cost of seven switchings to reice, $1.75 hauling an additional weight of 1,940 lbs., $4.21; leaving $1.02 for risk

and profit. HELD that respondents had justified the proposed charges of $25, $20, and $15. Westbound Transcontinental Refrigeration Charges, 34 I. C. C. 140.

IV. TARIFFS AND PUBLICATION.

See Tariffs.

§4½. In general.

(a) A carrier cannot recover refrigeration charges on an interstate shipment under an expressed or implied contract without making, publishing and filing fixed and definite rates therefor. Cudahy Packing Co. v. Grand Trunk Ry. Co., 215 Fed. 94, 93.

§5. Obligation to File.

(a) A carrier cannot recover refrigeration charges on an interstate shipment under an expressed or implied contract without making publishing and filing fixed and definite rates therefor. Cudahy Packing Co. v. Grand Trunk Ry. Co., 215 Fed. 94, 93.

§6. Construction in General.

(a) A carrier published a tariff containing the following provision: "Shippers desiring refrigerator service for freight in carloads must furnish at their own cost the necessary quantity of ice and salt, or this company, when requested, will obtain and furnish the same, charging therefor the actual cost including labor, but not less than $2.50 per ton of 2,000 lbs., fractions of tons to be charged for pro rata." The packing company requested the railroad to ice its interstate car load shipments of meat. The carrier did so, procuring the ice from a competitor of the packing company. The packing company refused to pay the icing charges of $2.50 charged for the same. HELD, while the tariff in so far as it provided that above $2.50 per ton "cost" would be charged, was void for indefiniteness, but so far as the $2.50 demanded, the carrier had the right to recover the same from the defendant. Cudahy Packing Co. v. Grand Trunk Ry. Co., 215 Fed. 93.

(b) A carrier published a tariff containing the following provision: "Shippers desiring refrigerator service for freight in car loads must furnish at their own cost the necessary quantity of ice and salt, or this company, when requested, will obtain and furnish the same, charging therefor the actual cost including labor, but not less than $2.50 per ton of 2,000 lbs., fractions of tons to be charged for pro rata." A packing company requested the railroad to ice its interstate car load shipments of meat. The carrier did so, procuring the ice from a competitor of the packing company. The packing company refused to pay the icing charges of $2.50 charged for the same. HELD, the tariff in so far as it provided that over $2.50 per ton "cost" would be charged, was void for indefiniteness, but so far as the $2.50 demanded, the carrier had the right to recover the same from the defendant. Cudahy Packing Co. v. Grand Trunk Ry. Co., 215 Fed. 93.

V. WEIGHTS.

See Weights and Weighing.

§7. Minimums.

See Minimums.

(a) Carrier should not be required to furnish special refrigerator cars unless the carrier be allowed to protect its revenues by requiring a substantial loading sufficient adequately to utilize such equipment. Minimum Weight on Fresh Meats and other Commodities, 30 I. C. C. 349, 350.

(b) Increase in minimum weight from 10,000 to 15,000 pounds on special refrigerated cars from Chicago to southern territory justified, provided a similar increase is made from St. Louis.. Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349, 351.

(c) Complainant attacked the American Express Company's practice with respect to the application of estimated and actual weights on shipments of vegetables from shipping points in Louisiana to Chicago, Ill. It also attacked the charges of the I. C. R. R. on vegetables from Kenner, La., to Chicago, Ill., as unreasonable and unduly discriminatory. The express company based its charges for the transportation of fruits and vegetables from St. Rose, La., and other stations on the I. C. R. R. north of Kenner, La., on actual weights, while for the transportation of like shipments in packages of like size and description from Kenner and New Orleans it applied a per package charge. On some of the heavier vegetables the charges based on actual weights were higher than the per package charge from New Orleans. This resulted in a violation of the long-and-

short haul clause. At the hearing the express company agreed to establish the per package charge from points north of New Orleans, and the adjustment being satisfactory to complainant, HELD, the complaint against the express company in this respect be dismissed but its application for relief from the provisions of the fourth section be denied. **Lower Rates to Hawthorne Than to Chicago.**—Complainant also attacked as being in violation of the long-and-short haul provision the rate of the I. C. R. R. on vegetables from Kenner, La., to Chicago. Hawthorne, Ill., is in the Chicago district and usually takes the same rates as Chicago. Via the usual route of movement certain delivery points in the district are intermediate to Hawthorne. Prior to 1909 the Chicago rate applied to Hawthorne. In that year the rate to Cnicago was increased but through oversight the rate to Hawthorne was allowed to remain at the lower figure, the same being true of other points in the Chicago district. This resulted in a violation of the long-and-short haul provision. It was not shown that any traffic moved to the lower rated points during the time when the rate to Chicago was higher. The Illinois Central R. R. Company's Fourth Section Application covering this situation was heard at the same time but defendant asked for no relief as to rates on traffic from or to points intermediate between New Orleans and Chicago. The tariff situation resulting in the lower rates to Hawthorne than to Chicago had been corrected at the hearing. HELD, the complaint be dismissed in this respect but the carrier's fourth section application be denied. **Overcharge.**—Complainant made a shipment of a carload of mixed vegetables from Kenner, La., to Chicago. Bill of lading was issued with routing specified by shipper as follows: "To L. & N. to Ashley, Ill., to I. C. to Chicago." Charges were collected on the basis of the combination to and from New Orleans. Kenner took the same rate as New Orleans. Upon examination it was found that the rates named in Emerson's tariff did at that time apply via the route designated, although evidently this was not intended. While the tariff contained an exception which provided for the application of rates named in individual tariffs of the I. C. R. R., this exception did not have the effect of excluding the application of the rate named in it when shipments were moved by the route designated in this instance. HELD, that the shipment had been overcharged in the amount of the charge from Kenner to New Orleans and reparation awarded. **Refrigeration Charges.**—The I. C. R. R. Co. has organized and controls the Central Fruit Despatch, which is a private car line furnishing refrigeration service for that carrier. It files no tariffs, its charges being published by the I. C. R. R. Co. In this case the reasonableness of the icing charges on shipments transported under such tariffs of the I. C. R. R. will be considered as that carrier is responsible for them. Complainant contended that icing charges on cars of vegetables from Kenner to Chicago and other northern points were unreasonable; that defendant discriminates against shippers from Kenner, in that it refused to permit them to do their own icing but insists on icing the cars itself and charging therefor certain amounts, while at New Orleans it permitted shippers to ice their own cars. The line of the I. C. R. R. with respect to icing charges is divided into groups or blocks. Group A extends from the first station north of New Orleans to Aberdeen Junction, Miss.; group B from Durant, Miss., to Michigan City, Miss.; group C extends from Grand Junction, Tenn., to Wickliffe, Ky. The difference in method whereby the shippers at New Orleans are permitted to ice their own cars, while shippers north are not, has obtained for a long time as a result of competitive conditions at New Orleans. Prior to June 27, 1812, there was a blanket refrigeration charge of $30 per car from all points south of the Ohio River to Chicago, subsequently the charge was raised to $40. The maximum haul from group A is 912 miles and the average about 824 miles; group B, $35, average haul 641 miles; group C, $30, average haul 449 miles. The service included the original icing and also the reicing in transit. A greater service is rendered in the icing of cars from the more southern points and division of a carrier's line into groups from which different charges are made has been approved in other cases by the Commission. The bunkers hold from 8,000 to 9,000 lbs. of ice, costing the I. C. R. R. about $3.40 per ton. The charges exacted for refrigeration on other lines ranged $72.00 on vegetables from Jacksonville, Fla.; 1,082 miles down to $43.00 from Humboldt, Tenn., 464 miles. The cost of a standard

refrigerator car is upward of $1,600, greater than that of ordinary box cars while the life of the refrigerator car is much shorter and maintenance double that of the others. The average cost of refrigeration on fruits and vegetables from Roseland and Ponchatoula, La. during the season of 1912 was $53.60 per car less than the revenue from the service. Complainant offered no affirmative evidence showing the unreasonableness of the charges or in rebuttal to the carrier's evidence. At New Orleans the shipper is permitted to ice the car himself with additional privilege of instructing reicing in transit, or the icing will be done by the carrier at a charge of $4.00 per ton, the shipper having the privilege to order reicing in transit. HELD, since the conditions at New Orleans were the result of controlling competition, they could not support a charge of undue discrimination, and the carrier justified the increased charges from Group A to Chicago. Kenner Truck Farmers' Ass'n. v. I. C. R. R. Co., 32 I. C. C. 1.

(d) Upon an allegation that the loading of fruit up to a higher carload minimum weight brings about deterioration of the fruit in transit, and it appears that a lowering of the minimum in question would bring about a substantial diminution of car revenue, it would seem that such reduction in the minimum should be required only on a convincing showing as to substantial deterioration in the fruit under existing conditions. R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 31.

(e) Complaint was filed by the R. R. Commission of California on behalf of shippers of deciduous fruits, embracing two charges; (1), that the minimum carload weight of 26,000 lbs., applying on deciduous fruits shipped under refrigeration from points in California to all destinations in other states was excessive and in violation of section 1 of the Act; (2), that the existing refrigeration rates on carload shipments of deciduous fruits from California points to Denver, Kansas City, St. Louis, Chicago, New Orleans, Philadelphia, New York and common points were unreasonable and in violation of section 1. The Refrigeration Lines. The refrigerator service is furnished by two refrigerator car companies, the Pacific Fruit Express and the Santa Fe Refrigerator Despatch Co., controlled and owned by the Southern Pacific and Union Pacific R. R.s and the A. T. & S. F. Ry., respectively. The car companies receive the entire refrigeration rate and a car rental of ¾c to 1c per mile. Practically all of the deciduous fruit traffic moves under refrigeration. The car is first preiced at the initial icing station, then after loading is again sent to the icing station and the bunkers filled before the car starts east. The cars are also reiced at certain points en route. The Calif. R. R. Com. contended that the cost of service should include only (1) the cost of ice used, and (2) a sum of $5.00 per car trip for damage to the ice bunkers, allowed by the Commission in the Arlington Heights case, 20 I. C. C. 107. On the other hand, defendants in showing refrigeration costs included (1) cost of the ice, (2) damage to bunkers, (3) supervision, which includes inspection and certain overhead charges, and (4) cost of hauling the weight of ice carried in the refrigerator car. The Commission holds that no extra charge should be made for the use of the refrigerator car, as this charge was included in the freight rate applicable alike to shipments in refrigerator cars under refrigeration and under ventilation.

The questions thus raised are (1st) whether the ice haulage item, and extra switching, are, as a matter of fact, covered by the present freight rate, rather than by the refrigeration charge; (2nd) whether they should properly be included in the freight rate or in the refrigeration charge. The P. F. E. during the past fiscal year paid a ten per cent dividend, had no bonds, and practically no outstanding indebtedness. The complainant however did not prove its assumption that the items of ice haulage and switching were included in the freight rate. As a matter of fact, in the Arlington Heights case the Commission found that the item of ice haulage was not included in the freight rate and no ground was found for an opposite conclusion in this case. The Commission considered the cost of the different items entering into the refrigeration charge, using statistics obtained from the records of the P. F. E. Co. These were conflicting, being furnished by both complainants and defendants. Complainant figured a cost of $2.26 per ton for the "entire system," apparently of the Southern Pacific Co., concluding that the average cost of ice handled by the P. F. E. Co., delivered in car bunkers, including the cost of ice purchased on the parent line and on foreign lines, would not exceed $2.50. Defendants concluded that the average cost of all ice placed in 154 test cars was $2.88. Defendants' higher cost figures

for two of their plants (Roseville and Colton) include interest on precooling plants. Only a small number of cars are precooled at these plants, the service, while free, being furnished on request of the shipper. In the case of the Carlin plant complainant failed to include as an element of cost plant depreciation, which should be done. Further there was a difference between complainants' and defendants' methods of assigning maintenance and running expenses. Aside from these differences between complainants and defendants, the Commission considered another factor. A considerable portion of the ice supply of the P. F. E. Co. is received from ice plants of the company, and the cost is figured on the cost of the ice at the plant, plus the cost of transportation, plus the cost of handling into the ice houses and cars. In the case of the Santa Fe the freight charges are assessed at company rates and the S. P. Co. at commercial rates. The Commission considered the item of transportation corresponding to the company rather than the commercial rates, and the ice costs used by the Commission may be considered minimum costs, and tend to reduce the cost figures of defendants. In calculating the average number of tons of ice consumed per car, the Commission selected the average Chicago haul as typical of the entire movement, using 24 cars of 154 test carloads. The ice consumption was found to be 13.69 tons per car, consideration being given to differences for different months in the year and this figure representing the average. The total cost of the tonnage used was found to be $785.73 and the average minimum cost per ton of ice $2.53. Thus the average minimum ice cost per car to Chicago was found to be $34.64. Considering the cost of haulage, it was found that the allowance of $20.00 made in the Arlington Heights case, would have to be increased somewhat, due to the increased load of ice in deciduous fruit shipments over those of citrus fruits, the former moving in the hotter months of the year. Considering all the circumstances, the Commission estimated the weight of ice carried on an average for the entire season at 4.5 tons; and using the basis of allowance used in the Arlington Heights case, supra, the cost figures to be allocated to this item were found to be $22.50. The Commission found also that in addition to these items the defendants should be allowed something for the costs included under the head of supervision, including superintendence and inspection, stationery and printing and general expenses. The Commission estimated this item at $3.00 per car. The Commission also found, as in the Arlington Heights case, supra, that $5.00 would be a fair allowance per trip for damage to ice bunkers and also damage to other parts of the car. Defendants insisted in addition that extra switching expense is properly chargeable to refrigeration service, stating that the cost would be about 25c per car for each switch movement. In the case of the Chicago shipments the car is reiced seven times, and at this rate the extra switching charge would be about $1.75 per car. It was found that this should be included in the refrigeration charge. Summing up, the minimum cost of refrigeration per car from California to Chicago of deciduous fruits was found to be made up as follows: Minimum cost of ice, $34.64; Haulage cost of ice, $22.50; Additional cost of supervision $3.00; Additional damage to car, $5.00; Extra switching, $1.75. The estimate of ice costs include a return of 6 per cent on the original investment in ice houses, plants and machinery; but the summary of costs does not include allowance for excess depreciation of refrigerator cars nor for claims for damage attributable to refrigerator service nor for profits on the service. The refrigerator rate to Chicago under attack was $75.00 per car, or $8.11 higher than the figures given above. In the Arlington Heights case, the Commission found that under a rate of $62.50 the total costs were $55.00, leaving a margin of $7.50 to cover elements of risk, and a fair profit. HELD, that judged by the test of cost of the service, and the fact that more than half of the movement is to Chicago and points east, it would seem that the present rate to Chicago, used as a typical case, is not excessive. The Minimum Weight. —Complaint is made of the minimum weight of 26,000 lbs. because it is claimed that the increase from 24,000 lbs. which prevailed prior to June, 1911, has resulted in increased deterioration particularly of the top tiers of fruit in the cars. While the present refrigerator car shows a considerable improvement over those formerly in use, some deterioration of the fruit is inevitable. The fruit is placed in the car shortly after picking and while still warm. Considerable time elapses before it cools off, and during this process the warm air rises to the top of

the car and forms a blanket in the upper portion, especially in the center away from the ice bunkers, with the consequence that in this space the refrigeration is more or less imperfect. The result is the top tier of fruit nearest this blanket tends to some extent to decay. It appeared rates in this traffic had successively been reduced. In 1903 the rate from California to the Missouri River, Chicago and related points was $1.25, to New York, $1.30, to Boston, $1.56. In 1907 to Chicago and points west it was reduced to $1.15, and to New York and Boston fixed at $1.45, and in 1910 on grapes and peaches to $1.25, and other deciduous fruit to $1.40. In 1911 the $1.15 rate was blanketed over the entire East, and the minimum raised to 26,000 lbs. The Commission finds it safe to assume that there has been an increased deterioration under the higher minimum, at least with respect to certain kinds of fruit. About half of the movement for 1913 consisted of grapes and there has been practically no change in the loading of this commodity, due to the fact that it is handled on the basis of estimated weights and these estimates have been increased. About 18 per cent of the movement for 1913 consisted of pears. To improve the carrying quality of this fruit it would be necessary to remove the entire top tier and thereby reduce the loading by 25 per cent, making the minimum even lower than 24,000 lbs. Pears are shipped green and ripen during transit, with the result that the top tiers generally bring higher prices than the lower ones. It was shown that the shippers have actually increased the weights of the packages, resulting in greater excess of the actual over the prescribed estimated weights, so that the carriers now transport a greater weight without a corresponding additional charge. This tends to show that the loss through deterioration cannot have been excessive, or, at least, that it was not sufficient to induce the shippers to take steps to insure safer carrying of the fruit. The Commission finds the strongest showing made by complainants against the higher minimum in comparisons made with minima for deciduous fruits to the destinations in question from other states, (Louisiana, Missouri, North Carolina, Oklahoma and Texas,) the minima ranging from 20,000 to 24,000 lbs. HELD, the bare comparison of minima, is not sufficient to alter the conclusion that the 26,000 lb. minimum has not been shown to be unreasonable; neither are the refrigeration rates attacked unreasonable. Complaint dismissed. Railroad Commission of California v. A. G. S. R. R. Co., 32 I. C. C. 17.

(f) Higher loading under ventilation than under refrigeration. Pacific Fruit Exchange v. S. P. Co., 31 I. C. C. 159, 164.

VI. REPARATION.

See Reparation.

§8. In General.

(a) Reparation denied on basis of lower refrigeration charge on strawberries, cantaloupes and peaches from Van Buren, Ark., to points in Iowa via competing line. Lagomarcino-Grupe Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A352.

RELATIVE RATES

See Advanced Rates, §5 (1), §5 (3); Commodity Rate, §2; Comparative Rates; Discrimination, §5 (e), §13; Equalization of Rates, §8; Evidence, 1 (a), §66; Reasonableness of Rates, §28; Reparation, §6 (t), §12; Through Routes and Joint Rates, §8.

RELEASED RATES.

I. CONTROL AND REGULATION.
- §½. In general.
- §1. Jurisdiction of Commission.

II. CONSTRUCTION AND APPLICATION.
- §1½. In general.
- §2. Duty to inform shipper.
- §3. Intention to use.
- §3½. Knowledge of shipper.

III. LEGALITY.
- §4. In general.

IV. REASONABLENESS.
- §5. In general.

V. LIMITATION OF LIABILITY.
- §6. Effect in general.

CROSS REFERENCES

See Loss and Damage, §9 11 (e), §13¾ (a).

II. CONSTRUCTION AND APPLICATION.

§1½. In General.

(a) Complainant protested against the rate collected on a shipment of sand-rubbed marble from Tate, Ga., to

Washington, D. C., as unreasonable. The value of the marble was approximately $3 per cubic foot, on which the unconditional or unreleased combination class rate was $2.20. Defendant prescribed two commodity rates on marble, one of 36½c per 100 lbs. on dressed or polished marble agreed to be of the value of 40c per cubic foot, and one of 23½c on rough-sawed, sand-rubbed or slushed slabs, agreed to be of the value of 20c per cubic foot. The consignor, by mistake, described the shipment as "finished marble," and endorsed on the bill of lading the statement that it was "agreed to be of the value of 40c per cubic foot." HELD, that there being but one agreed valuation rate on rough marble, only the 23½c rate could apply; and that complainant was damaged to the extent of the difference between the two rates. Reparation awarded. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109.

(b) Carriers must establish and afford to all shippers rates that are reasonable and unconditional as to the amount of the carrier's liability in case of loss or damage. In some instances it is reasonable to make varying rates on the same commodity, dependent on the value thereof. This is true where there is a wide range of actual value in the different grades or qualities of the same article. In such cases, where the carrier has established different rates, depending upon difference in actual value, the valuation by the shipper becomes a part of the description of the article shipped, and if he misrepresents the value to procure a rate applicable to the grade or quantity of less value than that actually shipped, it is in the nature of a false description of the property. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112.

(c) Where there are two published rates applicable on the same commodity when shipped released, based on difference in value, the legal rate automatically attaches to the declared or agreed value. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 111.

(d) Both shippers and carriers should bear in mind the clear distinction between cases where the lower of two rates on a commodity is dependent upon the restricted liability of the carrier, usually called a released rate, and cases where the stated value of a commodity by the shipper is a part of the description of the article, and not merely the exercise by him of an option as to which of two or more rates he will accept. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112.

(e) Shipper declaring false value to secure reduced rate is estopped, in case of loss or damage, from denying correctness of value given. In re Express Rates, 28 I. C. C. 132, 138.

(f) Rate on building granite from Quincy Adams, Mass., to Woodlawn, N. Y., found unreasonable because no provision was made for rates based on released valuation. Milne & Hector v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A331.

(g) Complainant attacked certain rates charged for the transportation of rugs, in bales, between certain points in western classification territory, as unreasonable. Western classification rated rugs as first class when of value not exceeding $50.00 and so receipted for; four times first class where value was not disclosed. Through oversight, and failure of defendant's agent to call his attention to the omission, complainant failed to state value on bills of lading. None of the rugs exceeded $50.00 in value. HELD that the charges collected were unreasonable to the extent that they exceeded the first class rate, it being the duty of the carrier's agent to call the attention of the shipper to the different rates and secure his signature to a proper bill of lading. Reparation awarded. Harmon & Co. v. N. P. Ry., 33 I. C. C., 370.

(h) Whenever a shipment is tendered a carrier upon which its tariffs provide for the application of alternative rates dependent upon the value thereof, the duty rests upon the agent of the carrier to call the attention of the shipper to the different rates and secure his signature to a proper bill of lading. Harmon & Co. v. N. P. Ry., 33 I. C. C., 370, 371.

(i) If a schedule of rates on an interstate shipment has not been filed and published as required by the Interstate Commerce Act, then the reasonableness of the contract becomes a question of fact, and depends upon whether the val-

ue was declared for the purpose of obtaining a lower of two or more rates proportioned to the amount of risk. Adams Express Co. v Cook (Ky. 1915), 172 S. W. 1096, 1098.

§2. Duty to Inform Shipper.

(a) When it is the purpose of carriers to offer different rates applicable in the same commodity, dependent not upon differences in value, but upon release of the carrier's liability for loss and damage, to the extent that this may lawfully be done, the tariffs should provide for the exercise of choice of rates, by means of a statement in the bill of lading, signed by the shipper, that the shipment is released to a value stated in the tariffs. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 113.

(b) In quoting lowest rate on household goods from Dallas, Texas, to Columbia, S. C., initial carrier failed to properly indorse bill of lading with lower released valuation applicable from Memphis to Columbia. Reparation awarded. Simons v. T. & P. Ry. Co., Unrep. Op. A-627.

(c) It is the duty of the initial carrier to see that released valuation is properly expressed in the bill of lading in order to give shipper the benefit of a lower rate. Simons v. T. & P. Ry. Co., Unrep. Op. A-627.

(d) Carrier's agent failed to note agreed valuation in bills of lading and rate charged found unreasonable, Reparation awarded. Shaaf-Regelman v. S. Ry. Co., Unrep. Op. A-740.

§3. Intention to Use.

(a) Carriers, when they desire to fix different rates, dependent upon substantial difference in value of different grades or qualities of the same commodity, should include in their tariffs a provision that for this purpose the shipper must state that the shipment is of a certain value, and the tariff rate applicable to such specified value must be applied. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 113.

§3½. Knowledge of Shipper.

See Tariffs, §3 (3).

(a) Two carriers filed and published tariffs under the Act making two rates on household goods, one of which was based on a declared valuation and limitation of liability in case of loss, and the other showed a higher rate where no valuation was declared or limitation prescribed. A shipper of household goods testified that upon inquiry the agent of one of the carriers quoted a rate to him without explaining that two rates were in existence, and also that when the contract of shipment was signed and the freight paid, the agent endorsed on it the valuation of the property and limitation of liability in case of loss, and that he objected to the limitation, but did not offer to pay the higher rate, nor ask to have the goods withheld from transportation. HELD, that the filing and publication of the rates afforded the shipper notice of the existence of the two rates, and he was presumed to have known of the limitation in value and of liability in the rate under which the shipment was made and the freight paid, and this rate determined; the liability of the carrier in an action brought for the loss of the goods. Christl v. M. P. Ry. Co. (Kans., 1914) 141 Pac. 587.

III. LEGALITY.

See Legality.

§4. In General.

(a) Every shipper is entitled to a reasonable unconditional rate, and a rate based upon agreed value must bear a reasonable relation to that unconditional rate. If the shipper does not wish to enter into an agreement as to the value of the thing shipped he can not be required to do so, and cannot be penalized for refusing to do so. Louisiana Sugar Planters' Association v. I. C. R. R. Co., 31 I. C. C. 311, 320.

(b) The Commission has expressly recognized the validity of a lower rate on a given article of traffic based on considerations of value, within legal limitations. Sims v. L. & N. R. R. Co., Unrep. Op. A-587.

(c) The filing and publication of interstate rates based on a reasonable agreement as to the valuation of property shipped, and which is proportioned to the extent of the risk assumed by the carrier, is consonant with public policy, and binding upon the parties. Christl v. M. P. Ry. Co., (Kans. 1914) 141 Pac. 587.

(d) Carriers must maintain a reasonable relation between rates on imported and domestic blackstrap and between the conditional and unconditional rate.

Louisiana Sugar Planters' Assn. v. I. C. R. R. Co., 31 I. C. C. 311, 321.

(e) If shipper does not wish to enter into an agreement as to value of the thing shipped he can not be required to do so, and can not be penalized for refusing to do so. Louisiana Sugar Planters' Assn. v. I. C. R. R. Co., 31 I. C. C. 311, 320.

(f) The rule is that, while a common carrier cannot exempt itself from negligence, it may by fair and reasonable exemptions limit the amount recoverable by a shipper to an agreed value made for the purpose of obtaining a lower rate of two or more rates, proportionate to the amount of the risk. K. C. & M. Ry. Co. (Ark., 1914), 170 S. W. 565, 566.

(g) In that case the court also held that a contract limiting or restricting the common-law rule as to the liability of a carrier for negligence in the shipment of goods is valid only when based on a consideration, usually a reduction in the rate of the freight charged. K. C. & M. Ry. Co. (Ark., 1914), 170 S. W. 565, 566.

IV. REASONABLENESS.

See Reasonableness of Rates.

§5. In General.

(a) Agreed value is not misrepresentation of value when accepted by carrier on account of release of liability beyond agreed amount. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112.

(b) Where different rates depend on value, undervaluation is in nature of false description of property. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112, 113.

(c) Law requires carrier to afford all shippers rates that are reasonable and unconditional as to the carrier's liability in case of loss or damage. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112.

(d) Tariffs should clearly distinguish between rates based on value and rates based on release of carrier's liability to a certain amount. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112, 113.

(e) In their release-from-liability tariff provisions, carriers should make it plain that they will not seek in any event to escape responsibility for loss occasioned by their negligence or delay. Protection of Potato Shipments in Winter, 29 I. C. C. 504, 507.

(f) A tariff that offers a protected service, in special equipment, for shipments of potatoes in winter at the risk of the carrier for weather damages and at the same time permits the shipper, at a lower rate and at his own risk, to furnish his own protection, not found unlawful or unreasonable. Protection of Potato Shipments in Winter, 29 I. C. C. 504.

(g) A rate based upon agreed value must bear a reasonable relation to the unconditional rate. Louisiana Sugar Planters' Assn. v. I. C. R. R. Co., 31 I. C. C. 311, 320.

V. LIMITATION OF LIABILITY.

§6. Effect in General.

(a) Under the Hepburn Act, if a regularly filed tariff offers two rates, based on value, and the goods are forwarded at the low value in order to secure the low rate, the carrier may avail itself of that valuation when sued for loss or damage to the property, and a provision in a state statute prohibiting such defense is ineffective. C. R. I. & P. Ry. Co. v. Cramer, 34 Sup. Ct. 383, 384; 232 U. S. 490; 58 L. ed. —.

(b) A special contract of shipment which does not limit the liability of the carrier to an agreed value, is ineffective where published tariffs on file graduate rates according to declared value and limit liability accordingly. A. T. & S. F. Ry. Co. v. Robinson, 34 Sup. Ct. 556, 558; 233 U. S. 173; 58 L. ed.——.

(c) Where in consideration of a lower rate, the value of horses and mules is released to $100.00 for each animal, the shipper is bound by such limitation, it not being invalid under the Carmack Amendment. Robinson v. L. & N. R. Co, (Ky., 1914), 169 S. W. 831.

(d) An undervaluation of property in fixing interstate freight rates based upon value, whereby the shipper obtains a lower tariff rate than the actual value of the property requires, is prohibited by law; and a stipulation in a shipper's contract for the release of a carrier from liability for loss of the property in excess of the amount at which such property is so undervalued, if the carrier has actual knowledge of such undervaluation, is void, and can

neither be made the basis of an action nor of a defense. St. L. & S. F. R. Co. v. Mounts (Okla., 1914), 144 Pac. 1036.

(e) Where there has been an unlawful declared or agreed undervaluation of property in fixing tariff rates in interstate shipments without the actual knowledge thereof on the part of the carrier, the shipper is estopped to recover more than such declared or agreed value. St. L. & S. F. R. Co. (Okla., 1914), 144 Pac. 1036.

(f) The burden of proof is upon an interstate carrier, who has negligently lost property in transit, claiming a release to the amount of the shipper's declared or agreed value of such property, to prove all the facts essential to such defense, including a valid stipulation of release. St. L. & S. F. R. Co. (Okla., 1914), 144 Pac. 1036.

RELOADING CHARGE

(a) The difference between the overhead or through rate and the combination on a jobbing point is referred to as a "reload" charge. Colorado Mfrs.' Assn. v. A. T. & S. F. Ry. Co., 28 I. C. C. 82, 87.

REPARATION.

I. JURISDICTION OF COMMISSION.
§½. In general.
§1. Necessity of and primary action by Commission.
§2. Necessity of and effect of finding of unreasonableness.
§3. Power to award tort damages.
II. RIGHT TO RECOVER.
§3½. Interest.
§4. Necessity of protest.
§5. Necessity of first paying tariff rate.
§6. Parties entitled to recover.
§7. Statute of limitations.
III. CIRCUMSTANCES DETERMINING RIGHT.
§7½. In general.
§8. Erroneous publication or quotation.
§8½. Previous action of Commission.
§9. Failure to post tariff.
§10. Laches.
§10½. Necessity of showing damage.
§11. Rate via competing line.
§12. Readjustment of rates.
§13. Res adjudicata.
§14. Special rate.
§15. Unpublished charges.
§16. Voluntary or subsequent reduction.
§17. Willingness of carrier to pay.
IV. LIABILITY FOR REPARATION.
§17½. Interest.
§18. Measure of reparation.
§19. Parties to make refund.
§20. Release of liability.
§20½. Undercharges or overcharges
V. PROCEDURE.
§21. Formal proceedings.
§22. Informal proceedings.
§23. Court pleadings and procedure.
§24. Intervening petitions.
§25. Statements for reparation.

CROSS REFERENCES

See Bills of Lading, §6 (c); Courts, §12 (l); Advanced Rates, VII; Allowances, VI; Bills of Lading, VI; Cars and Car Supply, VI; Claims; Courts, §12 (g); Differentials, V; Discrimination, §15, §17; Evidence, §3 (b); Facilities and Privileges, V; Interstate Commerce Commission, §2 (d), §8½ (b), VI; Long and Short Hauls, §11 (c), §12 (1), (a), §13; Minimums, §11; Overcharges; Passenger Fares and Facilities, IV; Refrigeration, VI; Routing and Misrouting, §11; Special Contracts, §4; Switch Tracks and Switching, §9; Tap Lines, §12; Terminal Facilities, §3 (g); Through Routes and Joint Rates, §15, §16; Water Carriers, §5; Weights and Weighing, V.

I. JURISDICTION OF COMMISSION.

See Interstate Commerce Commission, I.

§½. In General.

See Cars and Car Supply, §1 (b), §6.

(a) Voluntary dismissal by a shipper of a suit for damages for collecting unreasonable rates is not a bar to an action on an award of reparation. Baer Bros. Merc. Co. v. D. & R. G. R. R. Co.,

34 Sup. Ct. 641, 646; 233 U. S. 479; 58 L. ed. —.

(b) Reparation and rates may be dealt with in one order, though awarding reparation for the last and fixing rates for the future involve the determination of matters essentially different, one being in its nature essentially private and the other public. One is made by the Commission in its quasi-judicial and the other in its quasi-legislative capacity; but testimony showing the unreasonableness of a past rate may also furnish information on which to fix a reasonable future rate, and both subjects can be, and often are, disposed of by the same order. Baer Bros. Merc. Co. v. D. & R. G. R. R. Co., 34 Sup. Ct. 641, 644; 233 U. S. 479; 58 L. ed. —.

(c) Damages awarded on ground of unreasonableness of rate without establishing a rate for the future. Stone & Son v. S. Ry. Co., 29 I. C. C. 699, 701.

(d) The law does not impose upon the Commission the duty of determining solvency of road against whom an award of reparation is to be made, nor is it authorized to segregate from the total amount, the proportion due from such company. D. & W. Co. v. R. C. B. H. & W. R. R. Co., Unrep. Op. A-646.

(e) An award of damages by the Commission for discrimination in furnishing coal cars, based upon the giving of a rebate to a competitor for a certain period and then upon an excessive rate charged for another period, will not be reversed. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 335.

(f) Commission without authority under law to award damages accruing by virtue of violation of the act, except upon findings of fact based upon positive and definite evidence. Griffing v. C. & N. W. Ry. Co., 32 I. C. C., 283, 286.

(g) The Commission is confined in the making of awards of reparation to the injury or damage sustained by those who are the real and substantial parties at interest. Board of Trade of Kansas City, v. C. M. & St. P. Ry., 34 I. C. C., 208, 210.

§1. Necessity of and Primary Action by Commission.

(a) Plaintiff began suit against the T. & P. Ry. Co. and the K. C. S. Ry. Co. to recover damages for their refusal to furnish cars for loading oak railway ties at points on their lines in Arkansas and Louisiana for shipment to Linwood, Kan., beyond their lines, such refusal being justified on the ground that their joint through lumber tariff did not include a rate on such ties, crossties being a separate and distinct freight commodity. HELD, that the matter was one coming primarily within the jurisdiction of the Commission, and hence one which a court could not pass upon in the absence of prior action by that body. T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 888; 234 U. S. —; 58 L. ed. —.

(b) Where the Commission has once made an order establishing a rate for the future, it is not required to re-establish the rate in every order awarding reparation for shipments made under the rate condemned in the first order. D. & R. G. Ry. Co. v. Baer Bros. Mercantile Co., 209 Fed. 577, 580.

(c) The finding by the Commission, in an action to recover reparation awarded, that a given rate is unreasonable, while pertinent to the issue, in that it establishes a violation of the Act, is not decisive of the question of liability for damages under section 8, either prima facie or otherwise. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 795.

(d) Nothing in the Act warrants a presumption that a complainant has been damaged by some violation of the Act. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32, 33.

(e) Where the question involved is one of reparation alone, and the liability, if any, either rests upon the initial carriers alone, or is joint and several, the rates being joint, the Commission may determine the right to reparation, although only the initial carrier is a party to the record. Best Co. v. G. N. Ry. Co., 33 I. C. C. 1, 3.

§2. Necessity of and Effect of Finding of Unreasonableness.

(a) Damages will not be awarded under new rate adjustment when past rates not found unreasonable. Interior Iowa Cities Case, 28 I. C. C. 64, 76.

(b) Rates on sand from points in Illinois and Minnesota reduced by carriers, but lines entering California oppose the establishment of such rates on the

ground that they do not consider them compensatory. Rates not having been found unreasonable, complaint dismissed. Puget Sound Iron & Steel Works v. C. R. I. & P. Ry. Co., Unrep. Op. A249.

§3. Power to Award Tort Damages.

(a) It is not within the province of the Commission to grant exemplary damages. Eichenberg v. Southern Pacific Co., 28 I. C. C. 584, 588.

(b) The Commission's jurisdiction over claims for reparation does not extend to claims arising from loss, damage, or delay to shipments in transit, such claims being cognizable in the courts. Atlas Portland Cement Co. v. L. V. R. R. Co., 32 I. C. C. 487, 488.

(c) Commission's jurisdiction over claims for reparation does not extend to claims arising from loss, damage, or delay to shipments in transit, such claims being cognizable in the courts. Atlas Portland Cement Co. v. L. V. R. R. Co., 32 I. C. C., 487, 488.

II. RIGHT TO RECOVER.

§6. Parties Entitled to Recover.

See Infra, §19; Procedure Before Commission, V.

(a) A proceeding before the Commission to determine the reasonableness of an advance in rates is not in the nature of private litigation between the protestants and the carriers, but a matter of public concern in which the whole body of shippers is interested. The finding in such case is generally in its operation and inures to the benefit of every person who has been obliged to pay the unjust rate. Otherwise those who filed the complaint, or intervened during the hearing would have secured the advantage over the general body of the public, with the result that the order of the Commission would have created a preference in favor of the parties to the record, and would have destroyed the very uniformity which that body had been organized to secure. Therefore, every shipper similarly situated was entitled by appropriate proceedings before the Commission or the courts to obtain the benefit of that general finding and order. A. J. Phillips Co. v. Grand Trunk W. R. Co., 35 Sup. Ct., 444, 445.

(aa) The Interstate Commerce Commission has the right to allow a surviving partner to intervene in a reparation suit brought by the partnership for the recovery of damages for discrimination in the furnishing of coal cars and to make one report, in which reparation is awarded both to the partnership and also separately to the surviving partner, and such order is admissible in a United States District court to enforce the claim of the surviving partner. Meeker v. Lehigh Valley R. R., 35 Sup. Ct., 337, 339.

(b) Payment by a consignee of all freight charges on a shipment and deduction in settlement with the shipper of charges in excess of those charged from a certain intermediate point, is equivalent to payment by the shipper of the charges to the intermediate point, and by the consignee of those accruing from the intermediate point to destination. Curry & Whyte Co. v. D. & I. R. R. R. Co., 30 I. C. C. 1, 15.

(bb) Freight charges originally paid by the consignors but deducted from complainant's invoice price in the settlement of accounts, so that they were ultimately paid by complainant. Sligo Iron Store Co. v. St. L. & S. F. R. R. Co., 28 I. C. C. 616.

(cd) The record fails to establish by satisfactory evidence that the complainants ultimately paid the freight charges. Complaint dismissed. Shinn & Co. v. N. P. Ry. Co., Unrep. Op. A107.

(e) Under an agreement between consignee and a trucking company which unloaded freight, the latter paid track storage and demurrage charges. HELD, trucking company was the party ultimately damaged and is entitled to reparation. Kollyrite Trucking Co. v. P. R. R. Co., Unrep. Op. A146.

(f) Complainant was the consignee, and according to the evidence of record the transportation charges were paid by the consignor, who is not a party to this proceeding. Complaint dismissed. Crane v. C. St. P. M. & O. Ry. Co., Unrep. Op. A225.

(g) Necessary parties defendant are not before the Commission and it would be useless to make the correct party additional party defendant, because the claims against it are already barred under the two-year limitation of the Act. Graham & Co. v. S. I. Ry. Co., Unrep. Op. A256.

(h) Consignee deducted from invoice 12c per 100 pounds. Charges were col-

lected on basis of 12½c per 100 pounds. Damages awarded to consignor, who is complainant, on basis of 12c rate. Hall Lumber & Tie Co. v. C. & O. Ry. Co., Unrep. Op. A279.

(i) Consignee deducted from invoice 12c per 100 pounds. Charges were collected on basis of 12½c per 100 pounds. Damages awarded to consignor, who is complainant, on basis of 12c rate. Hall Lumber & Tie Co. v. C. & O. Ry. Co., Unrep. Op. A279.

(j) Complainant sold goods f. o. b. Milwaukee, where he was located, but shipments forwarded from Kalamazoo to various destinations in Wisconsin. The consignee paid the freight charges at destination and deducted from complainant's invoice the amount of same less an amount equal to what would have been the transportation charges on shipment from Milwaukee to destination. Complainant entitled to damages. Lindsay Bros. v. G. R. & I. Ry. Co., Unrep. Op. A326.

(k) Commission merchants who paid demurrage but charged the same back to the shipper are not entitled to reparation for a wrongful exaction of demurrage charges. New York Hay Exchange Asso. v. L. V. R. R. Co., 29 I. C. C. 90, 92.

(l) Parties entitled to damages not parties to case; held that refund can be made to them without order, the exaction of demurrage charges being unlawful and constituting an overcharge. New York Hay Exchange Assn. v. L. V. R. R. Co., 29 I. C. C. 90, 92, 93.

(m) Commission merchants who paid demurrage but charged same back on shippers held not entitled to reparation on account of unlawful exaction of demurrage. N. Y. Hay Assn. v. L. V. R. R. Co., 29 I. C. C. 90, 92.

(n) Consignor is entitled where consignee who paid charges was reimbursed by consignor. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 392.

(o) Complainant who purchased business held entitled to reparation on shipments moving prior to date of purchase. Stone & Son v. S. Ry. Co., 29 I. C. C. 699, 701.

(p) Damages denied where consignee paid freight and assigned claim to complainant association. It does not appear that shipper or consignee were damaged by discriminatory rates. Wichita Business Association v. A. T. & S. F. Ry. Co., 30 I. C. C. 374, 376.

(q) Where it appears that freight charges have been paid by the consignee and reparation is asked for by the consignor, such reparation will not be awarded to consignor until after the latter has furnished satisfactory proof that he has reimbursed the consignee and thereby has become the proper party in interest. Charles Warner Co. v. D. L. & W. R. R. R. Co., 32 I. C. C. 244, 246.

(r) Where freight rate from a certain point has been reduced by the Commission and reparation is to be awarded, and it is shown that a certain allowance has been made under the higher rates by the shipper to the consignee, whether termed a freight allowance or a trade discount, if this same allowance is also made under the reduced rates, it is evident that the damage resulting from the higher rates has been borne by the consignee and any reparation awarded should be awarded to the consignee. Standard Mirror Co. v. P. R. R. Co., 32 I. C. C. 261, 264.

(s) In the original report in this case, 27 I. C. C. 200, rates on window glass, rolled glass and plate glass from the Pittsburgh District, Pa.; Toledo, O., and Reynoldsville, Pa., to High Point, N. C., were found unreasonable and maximum rates fixed. In each case the rates prescribed were specified to apply to glass of not more than 120 united inches, outside measurements. Reparation was awarded. In due time the carriers filed tariffs, complying with the Commission's findings and complainants prepared statements, showing amounts of reparation accruing and submitted these, with the freight bills and invoices, for verification. It was found that many of the invoices showed a deduction in favor of the consignees (who were the complainants) which the defendants interpreted as a freight allowance. In most instances the notation read, "f. o. b. factory, actual freight allowed not to exceed 2c per square foot." Complainants contended that this was only a trade discount and not a freight allowance. It was stated that the freight was paid in full by the consignees and that no refund of this charge was made by the

shippers. From the evidence at the supplemental hearing it appeared that on shipments of window glass and rolled glass no allowances of 2c per square foot was made. However, this glass is sold, freight equalized with Pittsburgh, Pa., or Columbus, O. On shipments of plate glass from Toledo the manufacturers equalize the freight rates with their Pittsburgh competitors on plate glass the same as on window glass. The rate relationship of the various glass producing points was unchanged by the former decision. The manufacturer's allowance to equalize with his nearest competitor is the same now as before the rates were changed. On certain sizes of plate glass designated as "A.B. sizes" manufacturers make the further allowance of 2c per square foot. In cases where the freight equals or is less than 2c per square foot, only the actual freight is allowed. This allowance of 2c per square foot will range, according to the weight of the glass, from 44c to 48c. This is a little less than the rate of 53c fixed by the Commission from Pittsburgh to High Point. Representative of one of the shippers admitted that in his opinion reparation should be awarded to the consignees. It is shown that under the terms of sale the contents of car become the property of the consignee the moment the car is sold. The allowance in question is made per square foot and not according to weight. As a matter of fact, whether the allowance be called a trade discount or a freight allowance, the fact remains that in the case of High Point this allowance has not changed since the rate was reduced. It was evident that the damage that resulted from the excessive rate had been borne by the consignee and not by the shipper. Complainants would still have been damaged to the extent of the difference between the rate charged and that found reasonable, whether the allowance had been made or not. HELD, that the consignees are the parties to whom reparation should be awarded in accordance with the former finding of the Commission. Standard Mirror Co. v. P. R. R. Co., 32 I. C. C. 261.

(t) Where freight rates from certain points are reduced by order of the Commission and reparation is awarded, and where the relationship between the several points of shipment under the reduced rates remains the same, and where it is shown that the shipper has made an allowance on certain shipments to equalize freight charges with his nearest competitor; it is evident that whatever reparation is awarded should go to the consignee. Standard Mirror Co. v. P. R. R. Co., 32 I. C. C. 261, 262, 263.

(u) Reparation will be awarded only where the testimony shows that the excessive charges complained of were ultimately borne by the complainants. Railroad Comr's of Montana v. A. T. & S. F. Ry. Co., 32 I. C. C. 316, 318.

(v) Reparation will nct be awarded where the testimony with respect to payment of charges and final settlements between shippers and consignees is conflicting and uncertain. Crowdus Bros. v. A. T. & S. F. Ry. Co., 32 I. C. C. 355, 359.

(wx) Where it is not satisfactorily shown in the record that the consignors named in the complaint paid and bore the freight charges upon some of the shipments reparation cannot be made. Omaha Grain Exchange v. C. & A. R. R., 32 I. C. C. 597, 601.

(yz) Complainant acting in the capacity of draymen, have no interest in goods nor in payment of charges. Philadelphia Team Owners' Protective Asso. v. P. & R. Ry. Co., 32, I. C. C., 387, 393.

(aa) A complainant who bore freight charges on the basis of a rate found unreasonable is entitled to reparation; but no award can be made until proof to that effect has been adduced. Boise Lumber Co. v. P. & I. N. Ry., 33 I. C. C., 109, 116.

(bb) Reparation denied on two carloads of moulding sand from Richmond, Va., to Greensboro, N. C., because complainant failed to show that it was the rightful party in interest. Gullford Foundry Co. v. S. Ry. Co., Unrep. Op. A-873.

(cc) Consignor and consignee may file stipulation in record agreeing as to which of them ultimately paid charges and is entitled to receive reparation. Acme White Lead & Color Works v. N. P. Ry. Co., Unrep. Op. A-884.

(dd) Where it is not satisfactorily shown in the record that the consignors named in the complaint paid and bore the freight charges upon some of the

shipments, reparation cannot be made. Omaha Grain Exchange v. C. & A. R. R., 32 I. C. C., 597, 601.

(ee) Complainant attacked rates charged for the transportation of motorcycles in carloads from Armory, Mass., to Portland, Oreg., and Seattle, Wash., as unreasonable in so far as they were in excess of the first class rates. Complainant had added $15 to the sale price of each motorcycle to cover freight and drayage, and it was argued that he was therefore, not entitled to reparation. HELD: (1) That the rates charged were unreasonable to the extent that they exceeded the first class rates, and (2), following Burgess v. Transcontinental Freight Bureau, 13 I. C. C., 668, that reparation for exaction of unreasonable rates should not be denied because the shipper may have added the freight charges to the selling price. Reparation awarded. Ballon & Wright v. N. Y. N. H. & H. R. R. R., 34 I. C. C., 120.

(ff) Where a shipper has paid an excessive rate he may recover as reparation the difference between the rate paid and what would have been a reasonable rate at the time, even though the freight charges were added to the selling price of the article transported. Ballou & Wright v. N. Y. N. H. & H. R. R., 34 I. C. C., 120, 121.

(gg) Carriers cannot be heard to say that reparation for the exaction of unreasonable freight rates should be denied because the shipper or consignee from whom the same has been collected has on that account secured a higher price for the commodity from his purchaser. Ballou & Wright v. N. Y. N. H. & H. R. R., 34 I. C. C., 120, 121.

(hh) A consignee who has deducted the actual freight charges from the invoices and thereby charged them back to the consignors is not entitled to reparation. Bascom-French Co. v. A. T. & S. F. Ry., 34 I. C. C. 388, 389.

(ii) A penalty charge imposed on a shipper by the United States Government for failure to deliver a car of materials to the government within a certain time, is in the nature of consequential damages. Where the penalty has been collected because of delay occasioned by a car being wrongfully detained by the carrier, recovery cannot be had in a proceeding for reparation. Recourse must be had to the courts. Este Co. v. A. C. L. R. R., 34 I. C. C. 469, 471.

§7. Statute of Limitations.

See Claims, I.

(a) Rev. Stat. sec. 1047, Comp. Stat. 1913, sec. 1712, which places a limitation of five years upon any "suit or prosecution for a penalty of forfeiture, pecuniary or otherwise, accruing under the laws of the United States" does not apply to a suit brought to recover damages under the Interstate Commerce 35 Sup. Ct. Rep., 328, 332; 236 U. S. 412, 434; 59 L. ed.

(bc) A Pennslyvania statute containing a limitation of six years does not apply to a statute brought for the recovery of damages under the Interstate Commerce Act as that Act supersedes state legislation. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 333; 236 U. S. 412, 434; 59 L. ed.

(d) The amendment to section 16 of the Interstate Commerce Act contained a general provision limiting the time for invoking action by the Commission upon complaints for damages to two years from the accrual of the claim, and also a proviso that "claims accrued prior to the passage of this Act may be presented within one year." The proviso was in the nature of a saving clause, and, while it probably was not intended to revive claims which were then barred by applicable local laws, there is no warrant for saying that it was not intended to include claims accrued more than two years before the amendment. The plain import of the words is to the contrary. The Commission has uniformly construed it as permitting all accrued claims not already barred, to be presented within the year named, and they reasonably could not have done otherwise. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 333; 236 U. S. 412, 434; 59 L. ed.

(e) The amendment to section 16 of the Interstate Commerce Act, providing that claims which accrued one year prior to its passage might be presented within one year, took effect August 28, 1906, and claims accrued prior thereto could be presented to the Commission within one year thereafter. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 333; 236 U. S. 412, 434; 59 L. ed.

(f) The prohibitions of the Interstate Commerce Act against unjust discrimination relate not only to inequality of charges and inequality of facilities but also to the giving of preferences by

means of consent judgments, or the waiver of defenses open to the carrier. The railroad company therefore is bound to claim the benefit of the statute that a claim for reparation is not filed in time and could do so by general demurrer. For when it appeared that the complaint had not been filed with the time required by the statute, it was evident, as matter of law, that the plaintiff had no cause of action. The carrier not being liable to the plaintiff for overcharges collected more than four years prior to the bringing of this suit, it was proper to dismiss the action. A. J. Phillips Co. v. G. T. W. R. Co., 35 Sup. Ct. 444, 446; 236 U. S. 662; 59 L. ed.

(g) The provisions of a state statute can not assist a shipper who has failed to file his claim for an unjust freight rate with the Interstate Commerce Commission within two years, as therein provided. A. J. Phillips Co. v. G. T. W. R. Co., 35 Sup. Ct. 444, 445; 236 U. S. 662; 59 L. ed.

(h) If a consignor brings complaint alleging that a given rate is unreasonable and asking for reparation with respect to a specified shipment and if, upon hearing, the Commission finds that the rate is unreasonable and that reparation should be awarded with respect to the shipment in question, but that the freight money was paid by the consignee and not by the complainant, more than two years having elapsed, no recovery of reparation can be had by such consignee. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391.

III. CIRCUMSTANCES DETERMINING RIGHT.

§7½. In General.

(a) Reparation may properly be awarded where a discriminatory freight rate has been exacted, but it does not necessarily follow that because a rate is found to be unduly prejudicial that the complaining parties are the ones who have been damaged through its exaction. Curry & Whyte Co. v. D. & I. R. R. R. Co., 30 I. C. C. 1, 14.

(b) In 1905 the Commission, in the Tift and Central Yellow Pine Association cases, 10 I. C. C. 505, 548, condemned as unreasonable an increase of 2c per 100 lbs. in the rate on yellow pine lumber shipped from the southeastern states to the Ohio River and points beyond, and awarded reparation. Several hundred claims of a similar character, involving thousands of carloads, shipped between numerous points of origin and destination, being filed, the carriers agreed to pay, upon ratification of the proposal by 85 per cent of the claimants, 67c on the dollar in satisfaction of all provable claims; establishing clearing houses at Washington, Macon and New Orleans for that purpose. Complainant's claim for $1,318.09 was originally presented by attorneys claiming to represent claimant and prosecuted by them up to final tender of 67 per cent of that amount. Claimant and his son in person checked his shipments with the Macon clearing house employes. And neither such attorneys nor the manager was advised that a compromise settlement would not be accepted by him until after final tender of the carrier's check. HELD, that the evidence in connection with the case was convincing that claimant had assented to the compromise settlement, at least impliedly. It being assumed that claimant would accept a re-tender, no further findings or order was deemed necessary. Eastman, Gardiner & Co. v. I. C. R. R. Co., 29 I. C. C. 94.

(c) Award of reparation does not necessarily follow a reduction in the rate. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 172.

(d) Damages will be awarded where claim is not based upon reasonableness of rate charged, but involved simply a question of tariff construction. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 215.

(e) No award of reparation can properly be made pending an appeal to the Supreme Court of the United States. Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., 28 I. C. C. 274, 279.

(f) The Act entitled shippers to a just and reasonable transportation charge, and if these carriers have imposed upon these complainants rates in excess of this, they have thereby damaged the complainants to the extent for which reparation should be allowed. In re Advances on Live Stock, 28 I. C. C. 332, 335.

(g) Shipper inserted in bill of lading wrong car number. Returned upon discovery of the error. Carriers collected the published rate from point of origin to destination and return. Not in violation of Act and complaint dismissed.

Swedish Iron & Steel Corporation v. Bush Terminal Co., Unrep. Op. A323.

(h) Mere proof of specific shipments made and the amount for which reparation is sought does not make out a prima facie case when a discrimination in rate or service is the basis of the complaint. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32, 33, 34.

(i) Rates may be found unreasonable and damages denied. Morris, Johnson, Brown Mfg. Co. v. I. C. R. R. Co., 30 I. C. C. 443, 445; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 523; Sloss-Sheffield Steel & Iron Co., 30 I. C. C. 597, 604; Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 707.

(j) That complainant probably would have been able to make some of the purchases that went to his competitor had rates been the same from Pella and Knoxville, Iowa, does not constitute sufficient basis for an award of reparation. Rhynsburger v. C. R. I. & P. Ry. Co., Unrep. Op. A-815.

(k) Lumber was back hauled from Carlisle, Pa., to Gettysburg Junction on account of carrier's agent omitting Gettysburg Junction from the waybill. Reparation awarded. Kay v. Dry Fork R. R. Co., Unrep. Op. A-770.

§8. Erroneous Publication or Quotation. See Erroneous Rate.

(a) Damages awarded on basis of error in tariff. Morton Salt Co. v. M. L. & T. R. R. & S. S. Co., 28 I. C. C. 422, 424.

(b) Through clerical error Crosby, Wyo., was given lower rate on nut and lump coal than Gebo, Wyo. Subsequently corrected. Reparation denied on shipments moving during interim, damages not having been proven. Gallatin Lumber Co. v. C. B. & Q. R. R. Co., Unrep. Op. A185.

(c) Complainant when relying upon the original bill of lading, which contained an erroneous car number, is not entitled to reparation because not shown to be the fault of the carrier. Scattergood & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A412.

(d) Through error of defendant's agent by not knowing correct rate when consignor asked for the shipment to be diverted in transit the complainant is entitled to reparation. Welisch & Co. v. St. L. S. W. Ry. Co., Unrep. Op. A423.

(e) Through error of initial carrier complainant purchased a 7-day limited ticket instead of a 30-day limited one; connecting carriers collected cash from complainant because time limit had expired and therefore exempt from joining in making refund. Burden solely upon the initial carrier. Dierks v. S. P. Co., Unrep. Op. A460.

(f) Misquotation of a rate by carrier's agent does not of itself afford a basis for an award of reparation. Kulzer v. G. N. Ry. Co., Unrep. Op. A540.

(g) Error in naming the destination is upon the shipper, and carriers cannot be held responsible. Beaver Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A545.

(h) Higher rate charged through error in publishing tariffs. Rate voluntarily reduced by carrier and reparation awarded. Standard Steel Co. v. A. G. S. R. R. Co., Unrep. Op. A-549.

(i) Shipments of steel billets from Alabama City, Ala., to Knoxville, Tenn., were made at rate of $2.60 per net ton, charged through error in publishing tariffs. Reparation awarded on basis of quoted rate of $1.40 per gross ton, which was subsequently established by carriers. Standard Steel Co. v. A. G. S. R. R. Co., Unrep. Op. A-549.

(j) Through error defendant failed to allow reconsignment at Missouri Valley, Ia., as provided for in tariffs. Reconsigning and demurrage charges were wrongfully collected. Reparation awarded. Currie Co. v. C. & N. W. Ry. Co., Unrep. Op. A-563.

(k) Through error shipment moved via circuitous route taking higher rate. Reparation awarded. Floran v. Wells Fargo & Co., Unrep. Op. A-572.

(l) Through error agent of defendant quoted lower rate than one lawfully applicable. Lower rate in effect via competing lines. Reparation awarded. Brittain v. N. C. & St. L. Ry., Unrep. Op. A-581.

(m) Agent of carrier quoted lower rate than that lawfully applicable. Charges far exceeded value of shipment, which was sold. Lower rate subsequently established. Reparation denied because of failure of complainant to file claim within two-year period. Humphreys-Godwin Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-598.

(n) In quoting lowest through rate

on household goods from Dallas, Tex., to Columbia, S. C., carrier failed to observe lower released valuation applicable over that portion of the line from Memphis to Columbia. Reparation awarded. Simons v. T. & P. Ry. Co., Unrep. Op. A-627.

(o) Through error, C. M. & St. P. Ry. failed to publish a 7c rate on sulphuric acid from Howe and Nassau, Ill., to Milwaukee, Wis. Rate charged held unreasonable and reparation awarded. Pfister & Vogel Leather Co. v. Depue & Northern R. R. Co., Unrep. Op. A-636.

(p) Through error, tariff did not authorize use of short-line mileage in computing charges on automobile and part from Amarillo, Tex., and Oklahoma City, Okla. Reparation awarded. Buick Motor Co., v. S. K. Ry. Co. of Texas, Unrep. Op. A-647.

(q) Complainant alleged owing to an error in defendant's tariff, naming a rate on cement from Nazareth, Pa., to Bradford, R. I., unreasonable charges were collected. Between June 13 and August 1, 1912, complainant delivered to the Bangor & Portland Ry. (now operated as part of the D. L. & W. R. R.) at Nazareth, seven carloads of cement for transportation to "Bradford," a station on the N. Y. N. H. & H. R. R. At the time defendants had on file with the Commission a tariff naming rates of $1.85 per ton and $2.25 per ton, respectively, on cement, C. L., from Nazareth to "Bradford" and "Niantic," R. I., stations on the N. Y. N. H. & H. R. R. In May, 1911, the N. Y. N. H. & H. R. R. issued a circular addressed to its agents and connections, calling attention to the fact that the station formerly known as "Niantic" had been changed to "Bradford" and the station formerly known as "Bradford" to "Melville." This change in names was not shown until September 9, 1912, subsequent to the movement of all of the shipments. They moved to "Bradford," formerly "Niantic," which was the destination intended, and charges were collected of $2.25 per ton. The present rate of $2.25 to Bradford was not attacked as being unreasonable. However, complainant relied upon the tariff and sold the shipments in question on the basis of $1.85, and contended that on account of the tariff error it was damaged. HELD, since the tariff named a rate of $1.85 to "Bradford" and complainant relied upon it, it was entitled to reparation, and the tariff being a joint one, the carriers party to the rate were jointly liable for any damage resulting from the tariff error. Reparation awarded. Charles Warner Co. v. D. L. & W. R. R. Co., 32 I. C. C. 244.

(r) Misquotation of rate by carrier's agent not a basis for awarding reparation. Wolverton v. U. P. R. R. Co., 31 I. C. C. 23, 24.

(s) Carrier not held responsible for error of complainant's representative in stating number of baggage checks to carrier's agent at Los Angeles, Cal. Escout v. D. L. & W. R. R. Co., Unrep. Op. A-719.

(t) Tariff did not provide through first-class rate on dynamite from Aetna, Ind., to Louisville, Ky., on shipments destined to Pleasure Ridge, Park, Ky., corrected subsequent to movement. Reparation awarded. Aetna Powder Co. v. Wabash R. R. Co., Unrep. Op. A-727.

(u) Proportional rates applicable to wheat from stations in Illinois to Chicago reforwarded thence to Lake ports, not made applicable to Toledo, O., due to error in tariff. Reparation awarded. Armour Grain Co. v. I. C. R. R. Co., Unrep. Op. A-742.

(v) The quotation of an erroneous rate by a carrier, constitutes no basis for an award of reparation. Capital City Oil Co. v. T. & P. Ry. Co., Unrep. Op. A-750.

(w) Rates on alfalfa hay from El Paso, Tex., to Baton Rouge, La., during March, April, May and June, 1912, not found unreasonable as compared with rates via other lines. Held also that the quotation of an erroneous rate by a carrier constitutes no basis for an award of reparation. Capital City Oil Co. v. T. & P. Ry. Co., Unrep. Op. A-750.

(x) Omission of Catherine, Ala., from joint tariff, due to inadvertence. Rates found unreasonable and reparation awarded. Jackson Oil & Refining Co. v. S. Ry. Co., Unrep. Op. A-763.

(y) Carrier's agent omitted Gettysburg Junction from waybill and reparation awarded because of misrouting two shipments of lumber from Mill Creek and Jenningstown, W. Va. Kay v. Dry Fork R. R. Co., Unrep. Op. A-770.

(z) Omission of rate from tariff applicable on firebrick and fireclay via route designated by shipper from St. Louis, Mo., to Kirbyville, Tex., said to be

due to oversight. Reparation awarded. Laclede-Christy Clay Products Co. v. M. P. Ry. Co., Unrep. Op. A-780.

(aa) Reparation awarded on crude cotton seed oil from Oklahoma, refined in transit at Kansas City, destined to South St. Paul, which should have been moved at same joint through rate in effect to St. Paul, though not applicable to South St. Paul due to error in tariff. Swift &Co. v. C. G. W. R. R. Co., Unrep. Op. A-789.

(bb) Reparation awarded on crude cotton seed oil from Oklahoma, refined in transit at Kansas City, destined to South St. Paul, Minn., which moved at higher rate than was in effect to St. Paul; joint through rate having been omitted from tariff through error. Swife & Co. v. C. G. W. R. R. Co., Unrep. Op. A-789.

(cc) Commodity rate on malleable iron castings from Joliet, Ill., to Tulsa, Okla., said to have been published through error, was canceled leaving in effect class rate. Rate charged on shipment from St. Louis, Mo., to Tulsa, Okla., not found unreasonable. Norris v. A. T. & S. F. Ry. Co., Unrep. Op. A-820.

(dd) Omission of Buck, Okla., from McAlester group said to have been an oversight. Rate on soft lump coal from Buck to Fort Riley, Kans., found unreasonable and reparation awarded. McAlester Fuel Co. v. M. K. & T. Ry. Co., Unrep. Op. A-839.

(ee) Joint through rate of 68 cents on oranges from Umatilla, Fla., to Charleston, W. Va., via Cincinnati, Ohio, was a clerical error which was corrected by publication of the 69-cent rate to Huntington and Charleston. Markley & Co. A. C. L. R. R. Co., Unrep. Op. A-845.

(ff) Defendant states that publication of carload and less than carload basis on wool was due to inadvertence. Rates found unreasonable and reparation awarded on "lot" basis. American Woolen Co. v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A-846.

(gg) Cancellation of proportional rates on mill feed from Minneapolis, Minn., to points in Illinois and Iowa said to have occurred through error. Reparation awarded. Northwestern Feed Co. v. C. R. I. &. P. Ry. Co., Unrep. Op. A-847.

(hh) Cancellation of proportional rates on mill feed due to error. Reparation awarded. Northwestern Feed Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-847.

(ii) Omission of Trowel Ranch from feeding in transit arrangement said to have been unintentional. Reparation awarded. Purcell v. C. B. & Q. R. R. Co., Unrep. Op. A-860.

(jj) Misquotation constitutes no basis for an award of reparation. Caudle v. U. P. R. R. Co., Unrep. Op. A-870. Frost Mfg. Co. v. A. R. & S. F. Ry. Co., Unrep. Op. A-881.

(kk) Carrier quoted a rate of 25c on staves from Ellsworth Falls, Me., to Shediac, N. B. A rate of 26½c was charged. Lowest rate on file with Commission is 28½c, making an undercharge of $9.41. HELD, not misrouting. Independent Cooperage Co. v. M. C. R. R. Co., Unrep. Op. A-891.

(ll) Shipment of one refrigerator, k. d., from Grand Haven, Mich., to Mt. Clare, Nebr., through error in transfer, slip of initial carrier was billed to Mt. Clare, Nev. Reparation awarded. Lee-Coit-Andreesen Hardware Co. v. Crosby Transportation Co., Unrep. Op. A-944.

§8½. Previous Action of Commission.

See Reasonableness of Rates, §26½.

(a) A shipper of lumber who was not a party to proceedings before the Interstate Commerce Commission in which the lumber rate paid by him was declared unreasonable, was entitled as all other shippers similarly situated, by appropriate proceedings before the Commission or the courts to obtain the benefit of that general finding and order. A. J. Phillips Co. v. Grand Trunk W. R. Co., 35 Sup. Ct. 444, 445; 236 U. S. 662; 59 L. ed.

(aa) Reparation denied on basis of rates established in Kindel case, 15 I. C. C. 55, and reduction subsequent to decision. Canton Bridge Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A115.

(b) Reparation awarded on shipment of glucose, syrup and jelly from Granite City, Ill., to Trinidad, Colo., on basis of rates established in Kindel case, 15 I. C. C. 555. Moore Hardware & Iron Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A134.

(c) Reparation denied on basis of rates established in Minneapolis Traffic Association case, 22 I. C. C. 259, and permissive orders for reparation in Kindel

case, 15 I. C. C. 555. Colorado-Moline Plow Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A135.

(d) Reparation denied on shipments of stoves from South Pittsburg, Tenn., via Memphis, Tenn., to Denver, Colo., on basis of rates established in Kindel case, 15 I. C. C. 555. Davis & Shaw Furniture Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A167.

(e) Reparation denied on shipments of bean, butt and fish oil from San Francisco, Cal., to El Paso, Tex., up to the time when the Commission passed upon application under Section 4. Tuttle Paint & Glass Co. v. S. P. Ry. Co., Unrep. Op. A169.

(f) Reparation awarded on basis of rates established on petroleum and products from Kansas to Nebraska, and those established by carriers. Chanute Refining Co. v. M. K. & T. Ry. Co., Unrep. Op. A180.

(g) Reparation awarded on basis of rates established on petroleum and products from Kansas to Arkansas, and those established by carriers. Gay Oil Co. v. M. P. Ry. Co., Unrep. Op. A187.

(h) Reparation denied on basis of rates established in Metropolitan Paving Brick Co. v. P. C. C. & St. L. Ry. Co., 17 I. C. C. 197. Mack Mfg. Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. A242.

(ij) Carriers reduced rates to certain points in order to preserve relative adjustment of rates prescribed by the Commission in the Kindel case, 15 I. C. C. 555, and the Minneapolis case, 22 I. C. C. 259. Reparation denied on basis of reductions. Dinneen v. U. P. R. R. Co., Unrep. Op. A243.

(k) Reparation awarded on shipment of wooden bungs from Chicago, Ill., to Kansas City, Mo., on basis of rates established in Zang Brewing Co. case, 18 I. C. C. 337. Koch Butchers' Supply Co. v. C. & A. R. R. Co., Unrep. Op. A281.

(l) Reparation denied on basis of permissive orders for reparation in Kindel case, 15 I. C. C. 555, shipments not moving between points as to which the Commission prescribed rates. Lamar Mill & Elevator Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A290.

(m) Previous to reduction by Commission in rates to Utah common points, Kemmerer, Wyo., took common point rate. In complying with order of Commission no reduction was made in rate to Kemmerer, but later carriers voluntarily established rates on same basis. Reparation denied on basis of such reduction. Kemmerer Hardware & Furniture Co. v. U. P. R. R. Co., Unrep. Op. A293.

(n) Rate on stock cattle in excess of 75 per cent of rate in effect on fat cattle found unreasonable. Reparation awarded and reduction ordered. Brackney v. C. & N. W. Ry. Co., Unrep. Op. A343.

(o) Reparation denied on shipments of wall finish on basis of rates prescribed by Commission in Salt Lake City case, 19 I. C. C. 218. Salt Lake Glass & Paint Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-357.

(p) Reparation denied on basis of rate adjustment prescribed in Newport News case, 23 I. C. C. 345, between Newport News and Norfolk, Va., on wrapping paper to Atlanta, Ga. Continental Paper Bag Co. v. C. & O. Ry. Co., Unrep. Op. A-369.

(q) Reparation awarded on basis of rates prescribed in former report. Michigan Hardwood Mfrs.' Assn. v. T. F. B., Unrep. Op. A-390.

(r) Commission's opinion of Dec. 11, 1911, stated that shippers were entitled to reparation from and after the promulgation of the opinion, and not until then. In this case the shipments moved prior to Dec. 11, 1911, and rates that were in effect then should apply, Bigham & Rose v. T. & P. Ry. Co., Unrep. Op. A470.

(s) Commission's opinion of Dec. 11, 1911, stated that shippers were entitled to reparation from and after the promulgation of the opinion, and not until then. In this case the shipments moved prior to Dec. 11, 1911, and no reparation will be awarded therefor. Bigham & Rose v. T. & P. Ry. Co., Unrep. Op. A470.

(t) The fact that a rate has been found unreasonable is not a conclusive ground for reparation. Byrnes, Trustee for H. Woods Co., Bankrupt, v. A. C. L. R. R. Co., Unrep. Op. A492.

(u) Reparation awarded on basis of rates found to have been reasonable by Commission and established by carriers. United States Portland Cement Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-552.

§9. Failure to Post Tariff.

(a) Complainant cannot recover damages because of failure of carrier to post tariff containing a reduction in rates on whiskey from Louisville, Ky. to Ogden, Utah. Sunny Brook Distillery, Inc., v. Pa. Terminal Ry. Co., Unrep. Op. A-717.

(b) Failure of C. & N. W. Co. to provide tariff authority for reconsignment of shipments to points short of original destinations. Reparation awarded. Sunderland Bros. Co. v. C. & A. R. R. Co., Unrep. Op. A-875.

§10½. Necessity of Showing Damage.

See Discrimination, §15.

(a) Reparation may properly be awarded where a discriminatory freight rate has been exacted, but it does not necessarily follow that because a rate is found to be unjustly discriminatory and unduly prejudicial that the complaining parties are the ones who have been damaged through its exaction. Curry & Whyte Co. v. D. & I. R. R. R. Co., 30 I. C. C. 1, 14.

(b) Proof of damages resulting from the wrongful act of a carrier must be of such evidentiary facts as would be required to sustain such a recovery before a court of law. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32.

(c) There is nothing in the Act from which, though rates are shown to have been unduly preferential, a presumption of damage can be inferred. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32.

(d) Reparation will not be awarded to a complainant on account of lower rates accorded other shippers from competitive points, where the record furnishes no definite proof of damage suffered by complainant on account of such lower rate. Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120, 122.

(e) In 14 I. C. C. 250 the Commission held that the action of defendants in leasing to a certain shipper of cottonseed products a portion of their wharves at Galveston, Tex., for his exclusive use in handling such products and in failing to exact payment of wharfage charges therefor, to be unduly prejudicial to other shippers not so favored, including the complainant. The Commission's finding was upheld by the Supreme Court in 219 U. S. 498. Complainant now claimed reparation in the sum of $48,341.54. This total represented two items: (1) One of $30,689.78, on account of merchandise losses, expense accounts, interest, etc.; and (2) one of $17,651.76, being an arbitrary allowance of 79c per ton on 22,344 tons of cottonseed meal and cake. As to the first item, it appeared that complainants' losses were largely sustained in other lines of business, and in part before the defendants entered into the discriminatory contract referred to. Under the head of expense, complainant included a salary charge of over $5,000 per year for two years, the expense of a trip to Europe, premiums for life insurance, wedding presents, subscriptions to public improvements, etc. The second item of the claim for reparation was based on the difference between the cost per ton paid by the favored shipper under his contract and that paid by complainant as wharfage and other direct charges incident to the handling of cottonseed meal and cake. Complainant shipped 1,440 tons during the period in question, but did not claim that more than from 100 to 300 tons was shipped over defendant's docks. In fixing 79c per ton as the difference enjoyed by the favored shipper to his detriment, complainant merely estimated what he might have saved had he operated on the scale on which the favored shipper operated, without showing what he himself actually paid. The favored shipper conducted his business in a building costing over $60,000, and had in his service about 200 employes, whereas complainant maintained no establishment other than his office, and employed no laborers. HELD, that defendants could not be charged with losses sustained by complainant in connection with his exportations over the docks of their competitors, and that, as the evidence afforded no basis for an absolute calculation of damages, he can recover only under the stipulation of facts, in which it was conceded that the benefits accruing to the favored shipper under his contract gave him an advantage of 40c per ton. Reparation accordingly awarded in the sum of $120, representing a difference of 40c per ton on 300 tons. Eichenberg v. Southern Pacific Co., 28 I. C. C. 584.

(f) Where a shipper suffers pecuniary damage by reason of the existence of a discriminatory contract between the carrier and another shipper, and shows his

transactions with the carrier in such manner as to establish definitely the exact proportion of his loss, reparation will be awarded on the basis of his actual damages as thus exhibited. Eichenberg v. Southern Pacific Co., 28 I. C. C. 584, 588.

(g) Damages denied on allegation that competitors were afforded free reconsignment at Milwaukee, there being no measure of damage. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 660.

(h) There is no fixed measure of damages in favor of a shipper compelled to pay a higher rate than his competitor, and for private wrongs for which private injury is inflicted the compensation recoverable by the injured shipper is measured by the damages actually sustained and proved. Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 660.

(i) In an action to recover reparation awarded, a finding of the Commission that the plaintiff was charged an unreasonable rate and an order awarding him damages for the sum paid over that accruing under the reasonable rate, do not make a prima facie case, since others than plaintiff, the shipper, may have sustained the actual pecuniary loss, and the statute authorizes the recovery only of actual damages, not a penalty. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 797.

(j) Reparation will be denied where it does not appear from the record that either the shipper or the consignee has been damaged. Wichita Business Assn. v. A. T. & S. F. Ry. Co., 30 I. C. C. 374, 376.

(k) Before any party can recover under the Act he must show, not merely the wrong of the carrier, but that the wrong has in fact operated to his injury. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32, 33.

(l) Upon failure of proof of damages as a result of discrimination found by the Commission, claim for reparation dismissed. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32, 34.

(m) The fact of damage as well as the amount of damages claimed must be established and that by such evidentiary facts as would be required to sustain such a recovery before a court of law. New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32, 34.

(n) The mere fact that the rates charged were maintained in violation of the fourth section, while it may make the carrier subject to a prosecution under the Act for the recovery by the government of the penalties prescribed for a violation thereof, does not in the absence of proof of damage to the shipper, afford a basis for an award of reparation in his favor. Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 150.

(o) The mere fact that the seller may have added to the price the amount of the prospective freight charges based on the existing rate does not show that the buyer was damaged to the extent the rate was unreasonable, as the seller was under no obligation to refund any part of the price paid if the rate should be reduced before the commodity moved, and the buyer could not be required to pay more if the freight should be increased. Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 289, 293.

(p) Presumption of damage will not be inferred, but proof must be made of such evidentiary facts as would be required to sustain such a recovery before a court of law. Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98, 102.

(q) Reparation denied because of failure of complainants to prove that they had been damaged by reason of discrimination in distribution of cars. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531. 537.

(r) Where complainant fails to allege a specific amount of damage and where it is not shown by proof that complainant has been damaged, reparation will not be awarded. Central W. Va. Glass Mfrs. Assn. v. B. & O. R. R. Co., 32 I. C. C. 218, 221

(s) Paid freight bills alone do not constitute such clear and definite proof of damages as is required to authorize reparation on account of the charging of an unreasonable rate, and affidavits, when objected to by defendants, cannot be received as evidence of complainant's damage. Griffing v. C. & N. W. Ry. Co., 32 I. C. C. 283, 286.

(t) Where complainant merely claims reparation upon theory that shipments were or could have been reconsigned, Commission will not award. Godwin v. Y. & M. V. R. R. Co., 31 I. C. C., 25, 27.

(u) Where the record contains no proof that complainants were damaged the prayer for relief must be denied.

Pine Belt Lum. Co. v. G. & S. I. R. R., 33 I. C. C., 117, 118.

(v) Higher rate on barley than on malt, the manufactured product of barley, found to be unjustly discriminatory. No proof of damage; reparation denied. Gate City Malt Co. v. C. St. P. M. O. Ry. Co., Unrep. Op. A-890.

(w) Lower rate on desks from High Point, N. C., to Tacoma, Wash., than to Spokane, Wash., an intermediate point. Subsequent to hearing rates made same to both points. No proof of damage; reparation denied. Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918.

(x) Before award of reparation can be made on account of undue discrimination or preference on the part of carriers subject to the Act, the complainant must prove that he was actually damaged by reason of such discrimination and, furthermore, must prove the amount of damages. Mere proof of particular shipments made and of freight paid does not make out a prima facie case. Complainant must establish the fact and amount of damage. Spiegle v. S. Ry. Co., 32 I. C. C. 687, 689.

§11. Rate via Competing Line.

See Evidence, §47.

(a) Reparation awarded on basis of reduced rate established by carriers via competing lines subsequent to movement. No order entered establishing lower rate via route of movement, as record does not indicate necessity therefor. Lindsay & Co., Ltd., v. C. M. & St. P. Ry. Co., Unrep. Op. A219.

(b) Reparation denied on basis of lower combination rate in effect via long and indirect route than joint rate applied. Homer Lumber Co. v. S. A. L. Ry. Co., Unrep. Op. A351.

(c) Combination rates on apples from Glasgow, Mo. to Necedah and Grand Rapids, Wisc., found unreasonable, being higher than the joint through rate via another route. Reparation awarded. Miller & Co. v. Wabash R. R. Co., Unrep. Op. A-722.

(d) Joint through commodity rate on cottonseed foots under which carriers would not switch cars at Louisville, was subsequently increased, and reparation awarded on shipment from Charlotte, N. C., to Louisville, Ky., on basis of increased rate. Swift & Co. v. S. A. L. Ry. Unrep. Op. A-787.

(e) A rate is not proved unreasonable, and Commission will not award reparation upon mere showing that rate complained of was reduced to meet rates of competing lines. Athens Pottery Co. v. T. & N. O. R. R. Co., Unrep. Op. A-796.

(f) Reparation may not properly be awarded merely because of fact that a lower rate was in effect via competing lines. Lewis Mfg. Co. v. C. R. I. P. Ry. Co., Unrep. Op. A-819.

(g) Reparation cannot be awarded merely because of the fact that a lower rate was in effect via competing lines. Coal tar from Fort Dodge, Iowa, to Moline, Ill. Lewis Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-819.

(h) That a rate between two given points is higher via one route than via another does not of itself establish that the higher rate is unreasonable. Rate on sewer pipe from Fort Dodge, Iowa, to Biwabik, Minn., not found unreasonable. Plymouth Clay Products Co. v. Ft. D. D. M. & S. R. R. Co., Unrep. Op. A-833.

(i) Subsequently-established rate on cedar posts and laths from various points to Grant, Iowa, made applicable as result of competition, not sufficient basis for an award of reparation. Fullerton Lumber Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-834.

(g) Fourth-class rate on bi-chromate of soda from Niagara Falls, N. Y., to Milwaukee, Wis., not found unreasonable as compared with lower rate via another route. Trostel & Sons Co. v. L. V. R. R. Co., Unrep. Op. A-932.

§12. Readjustment of Rates.

(a) Packing-house products rates for the first time specifically declared applicable to lard substitute, and no reparation will be awarded. Texas Refining Co. v. A. & V. Ry. Co., 32 I. C. C. 192, 194.

§16. Voluntary or Subsequent Reduction.

See Absorption of Charges, §2 (a), §3 (f); Advanced Rates, §5 (4) (i); Commodity Rates, §2 (m); Evidence, §64; Switch Tracks and Switching, §9 (a); Through Routes and Joint Rates, §13 (rr), (ss), (uu), (vv).

(a) Reparation awarded on basis of lower rate established by carriers subsequent to movement. Florida Citrus Exchange v. S. A. L. Ry. Co., Unrep. Ops. A264; Mills v. B. & S. Ry. Co., A268; Kunz Grain Co. v. M. & St. L. R. R. Co., A280; Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., A283; Dodds Lumber Co. v. C. B. & Q. R. R. Co., A294; Bradford-Kennedy Lumber Co. v. T. & N. O. R. R. Co., A307; Holland v. Uintah Ry. Co., A329; Clapp & Co. v. Am. Exp. Co., A335; Steinhardt & Co. v. T. & P. Ry. Co., A338; Stewart v. C. & S. Ry. Co., A341; Sterling Pickling Works v. W. R. R. Co., A348; Burson Knitting Co. v. C. M. & St. P. Ry. Co., A375; Gisholt Machine Co. v. C. & N. W. Ry. Co., A391; Buffalo Cold Storage Co. v. S. A. & A. P. Ry. Co., A393.

(b) No reparation under present rate adjustment on traffic that has moved in the past. Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co., 28 I. C. C. 82, 91.

(c) Damages denied where rate voluntarily reduced. Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I. C. C. 594, 597.

(d) No reparation should be awarded on account of a rate reduction which appears to have been a voluntary act on the part of the carrier. J. E. Bryant Co. v. F. W. & D. C. Ry. Co., 28 I. C. C. 594, 597.

(e) Complainant attacked the rates of 86c and 81c charged on carload shipments of cocoanuts and bananas from New Orleans to Amarillo, Tex., as unreasonable and discriminatory compared with a rate of 72c to Quanah, Tex., 144 miles southeast of Amarillo. Between Feb. 25, 1910, and Feb. 15. 1912, complainant made numerous shipments of bananas in straight carloads and cocoanuts in straight carloads and in mixed carloads with bananas, being charged on the former 86c per 100 lbs. and on the latter 81c. While the tariff provided for a rate of 86c, reduced as to bananas to 81c on Aug. 7, 1911, it also provided a rate on bananas of 4c higher than Class C. or 67c per 100 lbs., effective from May 15, 1911, to Feb. 15, 1912. Amarillo's disadvantages as compared with Quanah were due to its location, rather than the rates charged, the territory west of it being sparsely settled, so that jobbers at that point must sell in the territory south and east. Complainant contended that the 86c rate paid on certain shipments exceeded the sum of the intermediate rates, but it appeared that none of the shipments moved via the route over which such intermediate rates applied. HELD, that the rate of 81c on bananas in carloads is not unreasonable, and that the reduction from 86c being voluntary on the part of the carrier no reparation should be awarded on account thereof. Neither was complainant entitled to reparation where the sum of intermediate rates exceeded 86c on shipments of cocoanuts in straight carloads, or in mixed carloads with bananas, subsequent to Aug. 7, 1911, on which charges exceeded 81c on bananas from May 15, 1911, to Feb. 15, 1912, on which charges exceeded 67c. Reparation to be awarded. J. E. Bryant Co. v. F. W. & D. C. Ry. Co., 28 I. C. C. 594.

(f) Rate found unreasonable and damages awarded on basis of rate in effect prior and subsequent to movement. Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701, 702.

(gh) Privilege of concentrating broomcorn at Wichita, Kan., was for a time withdrawn and then restored. Charges exacted during the interim found unreasonable and reparation awarded. American Warehouse Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A103.

(i) Subsequent to movement tariff filed providing for absorption of switching charges. This is the same as a voluntary reduction in rates and no award of reparation can be made on these facts alone. Laclede-Christy Clay Products Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A105.

(jk) Rate on kraut from Clyde, Ohio, to Elkins, W. Va., advanced and then reduced to former figure. HELD, unreasonable, and reparation awarded. Clyde Kraut Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A112.

(l) Reparation denied upon shipments which moved under rates which were reduced to a satisfactory basis prior to the filing of complaint. Daze v. A. T. & S. F. Ry. Co., Unrep. Op. A113.

(m) Carload rate on fans from San Francisco, Cal., to New York, N. Y., originating in the Orient, canceled and less-than-carload rate subsequently restored. HELD, unreasonable and reparation awarded. Strauss & Co. v. S. P. Ry. Co., Unrep. Op. A114.

(no) Reparation awarded on basis of

lower minimum established subsequent to movement. Goldfield Consolidated Mines Co. v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A126.

(p) Formerly higher rating in effect on mining salts in Western and Official Classification territory. Subsequently rating in Western territory reduced to basis of Official territory. Reparation denied. Portland Gold Mining Co. v. P. M. R. R. Co., Unrep. Op. A188.

(q) Formerly higher rating in effect on mining salts in Western than Official Classification territory. Subsequently rating in Western reduced to basis of Official territory. Reparation denied. Portland Gold Mining Co. v. P. M. R. R. Co., Unrep. Op. A188.

(r) Reparation awarded on basis of rates established by carriers in order to comply with order of Commission. Florien Lumber Co. v. U. P. R. R. Co., Unrep. Op. A-194.

(st) Rates on small arms ammunition from New Haven and Bridgeport, Conn., to Fort Smith, Ark., advanced and then restored. HELD, unreasonable and reparation awarded. Webber-Ayers Hardware Co. v. K. C. S. Ry. Co., Unrep. Op. A-217.

(u) Prior to date of shipment of small arms ammunition from Kings Mills, Ohio, to Fort Smith, Ark., a rate of 59c was in effect. On date of shipment 66c rate in effect and subsequently reduced to 55c. Reparation awarded on basis of 59c rate. Webber-Ayers Hardware Co. v. K. C. S. Ry. Co., Unrep. Op. A-217.

(v) Reparation awarded on basis of reduced rate established by carriers via competing lines subsequent to movement. No order entered establishing lower rate via route of movement, as record does not indicate necessity therefor. Lindsay & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-219.

(w) Joint rates canceled because carriers failed to agree on divisions, leaving higher combination rate in effect. Joint rate subsequently restored. Carriers not having justified advances, reparation awarded. Pfister & Vogel Leather Co. v. B. & M. R. R., Unrep. Op. A-238.

(x) Joint rates canceled because carriers failed to agree on divisions, leaving higher combination rate in effect. Joint rate subsequently restored. Carriers not having justified advances, reparation awarded. Pfister & Vogel Leather Co. v. B. & M. R. R., Unrep. Op. A-238.

(y) Reparation denied on basis of lower rate established subsequent to move. Dewey Bros. Co. v. C. C. C. & St. L. Ry. Co., Unrep. Ops. A-110; Beekman Lumber Co. v. S. L. B. & S. Ry. Co., A-119; Henning v. St. L. & S F. R. R. Co., A-189; Mason v. A. C. L. R. R. Co., A-247.

(z) Reparation awarded on basis of lower rate established subsequent to movement of shipment. Briggs & Turivas v. I. H. B. R. R. Co., Unrep. Ops. A-139; Northwest Auto Supply Co. v. S. I. Ry. Co., A-158; Lee Co. v. I. C. R. R. Co., A-161; Standard Oil Co. (Ky.) v. A. C. L. R. R. Co., A-163; Bristol Door & Lumber Co. v. C. C. & O. Ry. Co., A-197; Stanton Co. v. N. P. Ry. Co., A-226; Coosa Lumber Co. v. S. Ry. Co., A-232; Dunbar-Hansen Co. v. S. P. Co., A-234; Daugherty, McKey & Co. v. F. E. C. Ry. Co., A-253.

(aa) Reparation awarded on basis of lower rate established by carriers on mixed carloads of grapefruit and oranges from Bay View, Fla., to Dallas, Tex. Florida Citrus Exchange v. S. A. L. Ry., Unrep. Op. A-264.

(bb) Reparation denied on shipments of sulphuric acid on basis of lower rate established by carriers subsequent to decision by Commission. Goldfield Consolidated Mines Co. v. S. P. Co., Unrep. Op. A-266.

(cc) Reparation awarded on basis of minimums of 20 gross tons established by carriers on shipments of coal, subsequent to movement. White Oak Coal Co. v. C. & O. Ry. Co., Unrep. Op. A-271.

(dd) Rates on empty beer carriers lower when delivery on private sidings than when delivery on team tracks. Subsequently made same. Reparation awarded on basis of such reduction. Atlas Brewing Co. v. P. Co., Unrep. Op. A-289.

(eeff) Rate on empty beer carriers lower when delivery on private sidings than when delivery on team tracks. Subsequently made same. Reparation awarded on basis of such reduction. Atlas Brewing Co. v. P. Co., Unrep. Op. A-289.

(gg) Previous to reduction by Commission in rates to Utah common points, Kemmerer, Wyo., took common point

rate. In complying with order of Commission no reduction was made in rate to Kemmerer, but later carriers voluntarily established rates on same basis. Reparation denied on basis of such reduction. Kemmerer Hardware & Furniture Co. v. U. P. R. R. Co., Unrep. Op. A-293.

(hh) Order of Commission reducing rates required realignment by carriers in order to preserve usual relationship. Reparation denied on such basis. Boyle Commission Co. v. W. P. Ry. Co., Unrep. Op. A-327.

(iijjkk) Rates on coal from North Jellico and Wilton, Ky., to Speeds, Ind., advanced through error and subsequently reduced to former basis. Reparation awarded on shipments moving during interim on which complaint was filed within time to stop statute of limitations. Louisville Cement Co. v. L. & N. R. R. Co., Unrep. Op. A-333.

(ll) Rates on cement from Portland and Concrete, Colo., to points in Nebraska and Wyoming advanced and then restored to former basis. Reparation to be awarded on shipments moving during interim. Colorado Portland Cement Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-337.

(mm) Rates on cement from Portland and Concrete, Colo., to points in Nebraska and Wyoming advanced and then restored to former basis. Reparation to be awarded on shipment moving during interim. Colorado Portland Cement Co. v. C. B. & Q. R. R. Co., Unrep. Op. A337.

(nn) At time of movement no export rate in effect on cottonseed oil from Deport, Tex., to New Orleans, La. Subsequently lower rate applicable to shipments for export established. Reparation awarded. Steinhardt & Co. v. T. & P. Ry. Co., Unrep. Op. A338.

(oopp) Joint rate canceled on shelled corn from Wynot and Concord, Neb., to Fort Collins, Colo., leaving higher combination in effect. Joint rate subsequently restored. Reparation awarded on shipments moving during interim. McCaull-Dinsmore Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A342.

(qqrr) Reparation awarded on basis of lower joint rate established subsequent to movement than combination through rate charged. Sterling Pickling Works v. W. R. R. Co., Unrep. Op. A348.

(ss) Carrier filed tariff canceling provision for the absorption of switching charges on connecting and intermediate lines on grain. Provision subsequently restored. Reparation awarded on shipments moving during the interim. Cavers Elevator Co. v. M. P. Ry. Co., Unrep. Op. A349.

(tt) Reparation denied on basis of through rate with milling in transit privilege on shipments of grain from Chicago, Ill., to Louisville, Ky., destined to points in Virginia, established subsequent to movement. Templeton & Sons v. C. I. & S. R. R. Co., Unrep. Op. A362.

(uu) Reparation denied on basis of change in rating on bottle-washing machine and parts from Chicago, Ill., to Boise, Idaho. Lowe Mfg. Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A378.

(vv) Reparation awarded on basis of combination through rate reduced to equal joint through rate, one factor of which was not on file with Commission. Smith Lumber Co. v. S. P. Ry. Co., Unrep. Op. A389.

(ww) Reparation denied on basis of lower rate established by carriers subsequent to movement. Erickson Co. v. C. & N. W. Ry. Co., Unrep. Ops., A272; Matthiessenn & Hegeler Zinc Co. v. C. & N. W. Ry. Co., A273; R. R. Com. of La. v. T. & P. Ry. Co., A311; Hinton Fruit & Produce Co. v. C. & O. Ry. Co., A312; Boyle Commission Co. v. W. P. Ry. Co., A327; Maine Spinning Co. v. B. & M. R. R. Co., A350; Heger v. Am. Exp. Co., A397.

(xx) Damages awarded on the basis of a rate established six days after the shipment moved. Hanley Brothers Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A402.

(yy) Shipments moved prior to reduction of rate; HELD, not entitled to damages. Yellow Pine Co. of Philadelphia v. A. C. L. R. R. Co., Unrep. Op. A404.

(zz) Defendant reduced rates so to conform with other rates in the same territory and reparation awarded on that basis. Memphis Freight Bureau v. U. S. E. Co., Unrep. Op. A424.

(3a) Reparation awarded on the basis of a subsequently established rate, the

former being found unreasonable. Cox v. A. T. & S. F. Ry. Co., Unrep. Op. A427.

(3b) Reparation awarded on traffic moving during the interval after former rate was in effect and before it was restored. Kansas City Egg Case Filler Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A429.

(3c) Reparation awarded on basis of a subsequent voluntary reduction, defendants admitting prior rate was unreasonable. Brenner Lumber Co. v. V. & S. W. Ry. Co., Unrep. Op. A431.

(3d) Subsequently established rate found reasonable, and reparation awarded on that basis. Boyle Commission Co. v. O. S. L. R. R. Co., Unrep. Op. A432.

(3e) A voluntary reduction is not within itself a sufficient measure of reasonableness of the rate to form a basis for an award of reparation. Robinson Clay Product Co. v. B. & O. R. R. Co., Unrep. Op. A441.

(3f) Subsequent to the movement of shipment a lower joint rate and a proportional rate were made effective. HELD, the rate applied on the shipment was justified. Bigham & Rose v. T. & P. Ry. Co., Unrep. Op. A470.

(3g) Generally speaking, the law stands for what it means from the date when it takes effect, and not from the date when it is construed by the Commission, and reparation will not be awarded on the basis of a rate subsequently reduced. Washburn-Crosby Milling Co. v. B. & O. S. W. R. R. Co., Unrep. Op. A480.

(3h) Commission is without authority to suspend a rate after it has become effective. Lower rates had become effective, but the carrier thought they had been suspended, charges collected on the basis of the former and higher rate. HELD, reparation should be awarded upon the basis of the published and lower rate. Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A481.

(3i) Reparation basis upon a reduction that the defendant had determined to make. Columbus Board of Trade v. S. Ry. Co., Unrep. Op. A493.

(3j Reparation not awarded merely because the rate via the route of movement has been reduced to meet the rate of competing line. Trussed Concrete Steel Co. v. E. R. R. Co., Unrep. Op. A512.

(3k) Where rates are voluntarily reduced damages may be denied. Moore Stave Co. v. S. Ry. Co., 30 I. C. C. 105, 107.

(3l) The mere fact that a railroad company desired to absorb the switching charge, and after the shipments moved provided for such absorption, is not sufficient basis for finding such charges to have been unreasonable. Lorillard Co. v. P. R. R. Co., Unrep. Op. A-556.

(3m Absorption provided for after shipments moved. Railroad company makes no objection to issuance of order for reparation, but Commission cannot make such order unless some violation of the Act is shown. Lorillard Co. v. P. R. R. Co., Unrep. Op. A-556.

(3n) Rate on logs from Mirbat, Minn., to Duluth, Minn., found unreasonable and rate for future based on findings in Pulp & Paper Mfrs. Asso. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83. Reparation awarded. Curry & Whyte Co. v. G. N. Ry. Co., Unrep. Op. A-568.

(3o) Following decision in Eastern Wheel Mfrs.' Asso. v. A. & V. Ry. Co., 27 I. C. C. 370, 382, defendant reduced the rate on club-turned handles from West Point, Miss., to Cairo, Ill. Reparation denied. Clark-Danforth Handle Co. v. I. C. R. R. Co., Unrep. Op. A-570.

(3p) Subsequent voluntary reduction not in and of itself sufficient to justify an award of reparation. Muskogee Wholesale Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-577.

(3q) Reparation may be awarded on basis of lower rate established subsequent to movement of shipment. Shipp & Son v. L. & N. R. R. Co., Unrep. Op. A-557; Shea Bros. v. T. Ry. Co., Unrep. Op. A-558; Grand Lake Co. v. M. C. R. R. Co., Unrep. Op. A-573; Boice Lumber Co., Inc. v. C. C. & O. Ry., Unrep. Op. A-578.

(3r) Rate on walnut logs from Jackson, Tenn., to East St. Louis, Ill., reduced to meet rate via competing lines. Reparation awarded. Brittain v. N. C. & St. L. Ry., Unrep. Op. A-581.

(3s) The voluntary reduction of a rate in and of itself does not afford a basis for an award of reparation. Chestnut-Gibbons Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-586.

(3t) Rates on litharge from East Cambridge, Mass., to Corning, N. Y., reduced to meet rate via competing line. Reparation denied. Corning Glass Works v. B. & A. R. R. Co., Unrep. Op. A-596.

(3u) Rates voluntarily reduced subsequent to movement of shipments. Reparation denied. Chattanooga Sewer Pipe & Fire Brick Co. v. A. G. S. R. R. Co., Unrep. Op. A-605.

(3v) The Commission has repeatedly held that the voluntary reduction of rate is not of itself proof that the former rate was unreasonable. Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-607.

(3w) Rate on wood silos from Cincinnati to Verona and Paris, Ky., reduced subsequent to movement of shipment. Reparation denied. Kalamazoo Tank & Silo Co. v. Michigan Central R. R. Co., Unrep. Op. A-607.

(3x) Rate on lettuce from New Orleans to Chicago reduced subsequent to hearing. Reparation denied. Lower Coast Growers' & Shippers' Asso. v. American Express Co., Unrep. Op. A-621.

(3y) Rate on barrels from Menasha, Wis., to Texarkana, Ark., found unreasonable and reparation awarded, on basis of subsequently-established rate. Menasha Woodenware Co. v. M. St. P. & S. S. M. Ry. Co., Unrep. Op. A-651.

(3z) It cannot be said that the reduction of a rate or the addition of a gratuitous privilege by a carrier is even prima facie evidence that the tariff in effect prior thereto was unreasonable. Carpenter-Olwell Lumber Co. v. N. P. Ry. Co., Unrep. Op. A-658.

(4a) Rates on ties reduced to meet needs of complainant and prayer for reparation on shipments moving prior to establishment of same, denied. Fullerton-Mosses Tie Co. v. M. P. Ry. Co., Unrep. Op. A- 661.

(4b) Rates on cotton from Norfolk, Va., to points in Carolina territory, satisfactorily adjusted by a reduction. Reparation awarded. Latham Co. v. S. Ry. Co., Unrep. Op. A-669.

(4c) Rate on cotton seed from Wellston, Okla., to Little Rock, Ark., not found unreasonable as compared with subsequent reduction established to meet rate of a competing line. Dixie Cotton Oil Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-672.

(4d) Rate on printing paper from Kalamazoo, Mich., to Rock Island, Ill., reduced subsequent to hearing in Mississippi River case, not found unreasonable. King Paper Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-673.

(4e) Rates reduced because of competition between hair felt and other insulating materials, not sufficient basis for an award of reparation. American Hair Felt Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-674.

(4f) Rates reduced subsequent to movement of sewer pipe from Macon, Ga., and Chattanooga, Tenn., to Florence, S. C. Reparation denied. Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., Unrep. Op. A-676.

(4g) Rate on oranges and grapefruit from Florida points to Sioux Falls, S. D. increased, but subsequently reduced. Reparation awarded on shipments moving under advanced rate. State of South Dakota v. A. & V. V. Ry. Co., Unrep. Op. A-679.

(4h) Complainant attacked the refrigeration charges paid on 476 cars of deciduous fruits shipped from California points to points in other states, shipped during 1911. The rates in effect in 1911 were somewhat higher than those in effect in 1912, which were attacked by the California Commission and held reasonable in R. R. Commission v. A. G. S. R. R. Co., 32 I. C. C. 17. In the present case, complainant sought the establishment of rates which were not only lower than those in effect in 1911 but also from $10 to $20 lower than the rates of 1912. The real question in issue was whether an award of reparation should be made of the difference between the rates of 1911 and those of 1912, the latter having been found not unreasonable. Prior to 1911 the State of California was divided into groups, the refrigeration rate varying according to the group. Following the 1911 season a readjustment was made, under which the entire state was blanketed with the exception of a few points east of Sacramento, where the rate for a pre-iced car was $5 less than from the other parts of the state. Although this readjustment resulted in certain increases, in most cases there were reductions varying from $2.50 to $30.00 per car, with an average, it is said, of $5.00. HELD, the fact of the reduction does

not of itself establish unreasonableness. Reparation denied. Pacific Fruit Exchange v. S. P. Co., 32 I. C. C. 48.

(4i) Readjustment of rates on fertilizers from Norfolk to points in North Carolina on line of defendant may not properly be made the basis for an award of reparation. Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458, 462.

(4j) Charges on slabwood from Heineman's Mill, Tigerton, and State Line, Wis., to South Chicago, Ill. Based on the combination of intermediate rates to and from Barrington, Ill., found unreasonable to the extent that they exceeded subsequently established through rates. Reparation awarded. Edgar Moerke v. C. & N. W. Ry. Co., Unrep. Op. A-703.

(4k) Tariff naming through first-class rate on high explosives from Aetna, Ind., to Louisville, Ky., not applicable to dynamite, and corrected subsequent to movement of shipments. Reparation awarded. Aetna Powder Co. v. Wabash R. R. Co., Unrep. Op. A-727.

(4l) Through first class rate on high explosives in tariff governed by Official Classification not applicable to dynamite, corrected subsequent to movement of shipments. Reparation awarded. Aetna Powder Co. v. Wabash R. R. Co., Unrep. Op. A-727.

(4m) Reparation awarded on coal from groups on Southern Railway in Tennessee to Charlotte, N. C., on basis of subsequent reduction. Yarbrough & Bellinger Co. v. S. Ry. Co., Unrep. Op. A-733.

(4n) Rates on coal from Groups 7, 8 and 9 on the Southern Ry. to Charlotte, N. C., moving between Aug. 15, 1910, and Oct. 15, 1911, found unreasonable and reparation awarded on basis of subsequent reduction. Yarbrough & Billinger Co. v. S. Ry. Co., Unrep. Op. A-733.

(4o) Mixed carload rate voluntarily established by carriers on paper, paper articles and other commodities from St. Louis, Mo., to Muskogee, Okla. Reparation denied. Adleta v. M. K. & T. Ry. Co., Unrep. Op. A-734.

(4p) Voluntary reduction of a rate does not, in itself, justify an award of reparation. Adleta v. M. K. & T. Ry. Co., Unrep. Op. A-734.

(4q) Combination rates on L. C. L. shipments of merchandise from points east of Chicago, Ill., to Phoenix, Ariz., found unreasonable; and reparation awarded on basis of joint through class and commodity rates formerly in effect. Korrick v. A. T. & S. F. Ry. Co., Unrep. Op. A-745.

(4r) Carload rate on porch blinds cancelled and less-than-carload rate applied. Carload rate subsequently restored and reparation awarded on shipment moving ad interim. Gregg & Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. A-768.

(4s) Reparation awarded on canned goods from Baltimore, Md., to Poplar Bluffs, Mo., on basis of joint through rate established subsequent to movement of shipment. Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-769.

(4t) Joint rate on cross ties from Franks and Funston, La., to Lometa, Tex., cancelled, and higher combination became effective. Reparation awarded on shipments moving under high rate on basis of joint through rate subsequently established. Tilford-Hunt Lumber Co. v. H. & S. R. R. Co., Unrep. Op. A-772.

(4u) Rating of incubators and brooders in western and official classifications changed to third-class since shipments moved. Reparation awarded on mixed carload shipment which moved under second-class rating. Lee Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-775.

(4v) In order for firebrick and fireclay to move from St. Louis to Kirbyville, Tex., under a 27-cent rate, initial carrier would have had to switch it to another line thereby depriving itself of a line haul. Reparation awarded on basis of subsequently-established 27-cent rate over route designated. Laclede-Christy Clay Products Co. v. M. P. Ry. Co., Unrep. Op. A-780.

(4w) Rate and routing designated by shipper, but rate did not apply via route given. Reparation awarded on basis of subsequently-established rate on firebrick and fireclay from St. Louis, Mo., to Kirbyville, Tex. Laclede-Christy Clay Products Co. v. M. P. Ry. Co., Unrep. Op. A-780.

(4x) Reparation awarded on oak lumber from Provo, Ark., to Vesper, Kans., on basis of subsequently-reestablished joint through rate. Kansas City Bridge Co. v. D. Q. & E. R. R. Co., Unrep. Op. A-782.

(4y) Reparation awarded on cottonseed foots from Charlotte, N. C., to Louisville, Ky., on basis of joint through commodity rate of 27 cents increased subse-

quent to movement of shipments. Swift & Co. v. S. A. L. Ry., Unrep. Op. A-787.

(4z) Reparation awarded on sand from Cumberland, Md., to High Point, N. C., on basis of difference between class-A rate applied and subsequently-established rate of $3.30 per net ton. Standard Mirror Co. v. S. Ry. Co., Unrep. Op. A-788.

(5a) Charges collected on corrugated iron culverts from Canton, Ohio, to Lubbock, Tex., based on through fifth-class rates, found unreasonable and reparation awarded on basis of subsequent-established through commodity rate. Krakauer, Zork & Moye's Sucs. Inc. v. P. & N. T. Ry. Co., Unrep. Op. A-793.

(5b) Through fifth-class rate on corrugated iron culverts from Canton, Ohio, to Lubbock, Tex., found unreasonable and reparation awarded on basis of through commodity rate subsequently-established. Krakauer, Zork & Moye's Sucs. Inc. v. P. & N. T. Ry. Co., Unrep. Op. A-794.

(5c) A rate is not proved unreasonable, and Commission will not award reparation, upon mere showing that rate complained of was reduced to meet rates of competing lines. Athens Pottery Co. v. T. & N. O. R. R. Co., Unrep. Op. A-796.

(5d) Classification provided, under heading "pipe and pipe fittings," fifth class rate on culverts. Charges collected on basis of through fifth-class rate from Canton, Ohio, to Lubbock, Tex., found unreasonable and reparation awarded on basis of subsequently-established commodity rate. Krakauer, Zork & Moye's Sucs. Inc. v. A. T. & S. F. Ry. Co., Unrep. Op. A-805.

(5e) Joint through rate of 85c established subsequent to movement of creosote from Bayway, N. J., to Los Angeles, Cal., and San Francisco, via New Orleans, La., not a basis for awarding reparation. Combination rate charged not found unreasonable. Bayway Chemical Co. v. C. R. R. Co., of N. J., Unrep. Op. A-810.

(5f) Commission has repeatedly held that the voluntary reduction of a rate to meet the rate of a competing line or route is not in itself a sufficient basis for awarding reparation. Bayway Chemical Co. v. C. R. R. Co. of New Jersey, Unrep. Op. A-810.

(5g) Commission has repeatedly held that mere voluntary reduction of a rate and expressed willingness of carrier to award reparation on basis of reduced rate do not, in absence of supporting proof, afford sufficient basis for an award of reparation. Fullerton Lumber Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-834.

(5h) Subsequently-established rate on cedar posts and laths from various points to Grant, Iowa, made applicable as result of competition, not sufficient basis for an award of reparation. Fullerton Lumber Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-834.

(5i) Cancellation of proportional rates on mill feed from Minneapolis, Minn., to points in Illinois and Iowa said to have accrued through error. Reparation awarded on basis of rates previously and subsequently in effect. Northwestern Feed Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-847.

(5j) Through rate established on fir lumber from National, Wash., to McGrew, Nebr., subsequent to movement of shipment in question, and refund cannot lawfully be made. Pacific National Lumber Co. v. T. E. R. R. Co., Unrep. Op. A-861.

(5k) Rate on raspberries, carloads, from Puyallup, Wash., to Watertown, S. D., not found unreasonable and reparation awarded on basis of subsequently-established rate. Rate compared with other rates to competing points. Stacy Fruit Co. v. Northern Express Co., Unrep. Op. A-868.

(5l) Reparation awarded on raspberries carloads, from Puyallup, Wash., to Watertown, S. D., on basis of subsequently-established rate. Stacy Fruit Co. c. Northern Express Co., Unrep. Op. A-868.

(5m) Rate of $1.43 per hundred pounds on barley malt from Milwaukee and Manitowoc, Wis., and Chicago and Cragin, Ill., to Prescott, Ariz., found unreasonable. Reparation awarded on basis of subsequently-established rate of $1.00. Arizona Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-885.

(5n) Voluntary reduction of a rate does not of itself constitute a sufficient basis for an award of reparation. Bartlett Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. A-887.

(5o) Voluntary reduction of a rate does not of itself constitute a sufficient basis for an award of reparation. Bart-

lett Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. A-887.

(5p) Water-and-rail rates from New York, Philadelphia, Baltimore and interior points to Bluefield, W. Va., reduced to basis of rates prescribed by Commission via all-rail route. Reparation denied on shipments made when higher rates were in effect. Woolworth Co. v. Old Dominion S. S. Co., Unrep. Op. A-901.

(5q) Rate on lumber from Rock, W. Va., to Hagerstown, Md., found to have been unreasonable to the extent that it exceeded the subsequently-established joint through rate. Reparation awarded. Ellis & Meyers Lumber Co. v. V. Ry. Co., Unrep. Op. A-904.

(5r) Upon complaint carriers reduced the through rate and minimum weight on peanuts from Suffolk, Va., to Musgogee, Okla., to equal the sums of the intermediates. Goodner-Malone Co. v. M. V. R. R. Co., Unrep. Op. A-907.

(5s) Rate of 87½c per 100 pounds on cabbage from Brookhurst and Stanton, Cal., to Spokane, Wash., found unreasonable to the extent that it exceeded the subsequently-established rate of 75 cents. Reparation awarded. Ryan & Newton Co. v. O. W. R. R. & N. Co., Unrep. Op. A-914.

(5t) Rate of 75c per ton on coal from Marion, Johnson City and West Frankfort, Ill., to Chaffee, Mo., found unreasonable to the extent that it exceeded the subsequently-established rate of 60 cents. Reparation awarded. Astor v. St. L. & S. F. R. R. Co., Unrep. Op. A-915.

(5u) Rate on motorcycles, l. c. l., from Portland, Oreg., to Hoquiam, Wash., found unreasonable in so far as it exceeded the subsequently-established rate of one and one-half times first-class. Reparation awarded. Becker v. O. W. R. R. & N. Co., Unrep. Op. A-917.

(5v) Rate on desks from High Point, N. C., to Spokane, Wash., higher than rate to Tacoma, Wash., a farther distant point, reduced after hearing to basis of Tacoma rate. Reparation denied. Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918.

(5w) Shipments of box shooks moved interstate from Flagstaff, Ariz., to Globe, Ariz. After shipment was made lower intrastate rate was established. Reparation awarded. Arizona Lumber & Timber Co. v. A. T. & S. F. Ry Co., Unrep. Op. A-920.

(5x) In publishing rate on lumber from Flagstaff, Ariz., to Globe, Ariz., box shooks were excluded. Shipment moved via interstate route taking higher rate. After shipment was made box shooks were included in list to which lumber rate applied. Reparation awarded. Arizona Lumber & Timber Co. v. A. T. & S. F. R. R. Co., Unrep. Op. A-920.

(5y) Combination rates on fresh fish from Seattle, Wash., to Chicago and Philadelphia via St. Paul, Minn., reduced to basis of through rate via Chicago after shipments moved. Case held open for proof. New England Fish Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-924.

(5z) Combination rates on coke from Bessemer, Ala., to Marshall, Tex., back hauled from Jefferson, Tex., under new bills of lading, not found unreasonable as compared with subsequently-established through rate. Marshall Car Wheel & Foundry Co. v. T. & P. Ry. Co., Unrep. Op. A-929.

(6a) Rate on lumber from Lauderdale, Miss., to Nashville, Tenn., reduced after shipment moved to lower basis than that found to have been reasonable by Commission. Reparation denied, Chesnutt Lumber Co. v. M. & O. R. R. Co., Unrep. Op. A-933.

(6b) Combination rate on apples from Carrollton, Mo., to Grand Rapids, Wis., found unreasonable to the extent that it exceeded the subsequently-established joint through rate. Case held open for proof. Miller & Co. v. W. R. R. Co., Unrep. Op. A-942.

(6c) Rates on wheat from Wilmore, Kans., to certain Arizona points found unreasonable to the extent that they exceeded the subsequently-established rates. Reparation awarded. Millers Grain Co. v. A. R. & S. F. Ry. Co., Unrep. Op. A-958.

§17. Willingness of Carrier to Pay.

See Evidence, §3.

(a) In 22 I. C. C. 488, complainant protested against a rate of $7.50 per ton on sulphuric acid in carloads from Copperhill, Tenn., to Savannah, Ga., as unreasonable. Before the filing of the complaint the rate had been reduced to $3.25. The former rate of $7.50 was declared unreasonable and reparation awarded. But the defendants differed as to the proportion of the reparation which each should pay, and in five instances the

freight had been paid by the consignee without reserving the right to require repayment from the complainant. Complainant had no interest whatever in one of these consigees, and as to the others its interest was merely that of a stockholder having no control in their management. More than two years had elapsed since the filing of the claims. HELD, that while apparently the damages should be apportioned among the carriers upon the basis of the divisions of rates agreed upon between them, nevertheless if they cannot agree upon the proportion they should apply to the Commission for a determination of the matter, and that no reparation can be had save upon claims filed with the Commission by persons entitled, either at law or in equity, to prosecute and recover upon them. That the Commission cannot enter an order at the suit of the consignor for reparation when it has not paid the freight, nor, in the same suit, award reparation to the consignee where over two years have elapsed. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391.

(b) Agreement to reduce rate not sufficient for an award of reparation on shipments made prior to such reduction. Erickson Co. v. C. & N. W. Ry. Co., Unrep. Op. A272.

(c) Reparation orders founded only upon willingness of carriers to pay, would afford a convenient method of cloaking rebates with the sanction of law. Omaha Cooperage Co. v. I. C. C. R. R. Co., Unrep. Op. A-629.

IV. LIABILITY FOR REPARATION.

§17½. Interest.

(a) Where excessive rates are paid under protest, so that the carrier must know that the person paying the same claims the rates to be unlawful, the Commission is justified in allowing interest in awarding reparation. D. & R. G. Co. v. Baer Bros. Mercantile Co., 209 Fed. 577, 579.

(b) The Commission has uniformly allowed interest on claims for reparation, although in determining the period for which interest should be reckoned it has not always inquired with minuteness as to the date when the shipment was delivered and the freight money became payable. There is no apparent reason why, if defendants have actually collected money of the complainant to which they are not entitled, they should not pay interest for the use as well as refund the principal itself. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C., 391, 395.

§19. Parties to Make Refund.

See Common Carriers, §8 (a).

(a) In awarding reparation the Commission will not attempt to determine in what proportion payment should be made by the various carriers that participated in the transportation. Its order is for a gross sum, and runs against all the carriers, leaving them to apportion the sum among themselves. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391.

(bc) An award of reparation is due only from a carrier to a shipper, and not to one carrier, as a carrier, from another. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C., 93, 108.

(d) Claim for reparation must come from shipper who pays rate and order must run against each carrier in the route. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 108.

(e) Reparation awarded against line which purchased line over which traffic moved. Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707, 709.

(f) Where shipments upon which reparation is sought are made over a line which is purchased by a defendant prior to the filing of the complaint, and such defendant has gone into possession and assumed the assets and liabilities of the line over which the shipments were made, reparation will be awarded against such defendant. Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707, 709.

(g) The damages should be apportioned upon the basis of the rate established and the divisions of that rate; each carrier should pay such sum as the amount actually received by it exceeds the amount which it would have received had the rate fixed by the Commission been applied. Carriers may submit this matter to the Commission if unable to agree. International Agricultural Corporation, 29 I. C. C. 391, 392.

(h) Carriers parties to rate are jointly liable for any damage resulting from the joint tariff error. Warner Co. v. D. L. & W. R. R. Co., 32 I. C. C. 244, 246.

§20½. Undercharges or Overcharges.

See Overcharges; Undercharges

(a) Undercharges and overcharges taken into account in awarding reparation. Jackson Oil & Refining Co. v. S. Ry. Co., Unrep. Op. A-763.

V. PROCEDURE.

See Procedure Before Commission, §5 (c).

§21. Formal Proceedings.

(a) A rehearing may be had to determine to whom reparation should be made on mixed carloads of vegetables and potatoes in hampers from points in Florida to Chicago, Ill., under findings in former report. Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., Unrep. Op. A-939.

§23. Court Pleadings and Procedure.

See Actions at Law.

(a) In an action to recover reparation awarded, where the plaintiff has introduced the report of the Commission, the court should instruct the jury as to what findings are and what are not made prima facie evidence by the statute. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 795.

(b) A reparation order entered May 1, 1911, which required payment on or before July 15, 1911, held not void for the reason that defendant's motion for rehearing, seasonably filed, was not acted upon until Oct. 9, 1911, and the original order had never been extended. St. L. S. W. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 593.

§24. Intervening Petitions.

(a) But while every person who had paid the rate could take advantage of the finding that the advance was unreasonable, he was obliged to assert his claim within the time fixed by law. When the overcharge was collected a cause of action at once arose, and the shipper at once had the right to file a complaint, or to intervene in proceedings instituted by others. If he failed to take either of those steps, and there was a finding of unreasonableness in the proceedings begun by others, he could, if in time, present his claim, and await the result of the litigation over the validity of any order made at the instance of those parties. If it was ultimately sustained by the court as valid, he would then be in position to obtain reparation from the Commission—or a judgment from a court of competent jurisdiction, on a claim that had been seasonably presented. But neither proceedings begun by other shippers, nor findings of unreasonableness and orders issued thereon by the Commission, would save the rights of those who disregarded the requirements of the Hepburn Amendment, that "all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after, provided that claims accrued prior to the passage of this act may be presented within one year." 34 Stat. at L. 590, chap. 3591, Comp. Stat. 1913, §8584. In the present case the overcharges were made and paid prior to August, 1904. The present suit was brought May 9, 1909, less than two years after the validity of the Commission's order was sustained by the Supreme Court, but more than one year after the passage of the Hepburn Amendment, and more than four years after the plaintiff's cause of action arose, therefore, the plaintiff's claim not having been filed within two years, he cannot recover. A. J. Phillips Co. v. Grand Trunk W. R. Co., 35 Sup. Ct. 444, 445; 236 U. S. 662; 59 L. ed.

§25. Statements for Reparation.

(a) In claiming reparation under an order of the Commission, complainant will be expected to prepare a statement showing as to each shipment upon which reparation is claimed the date of movement, destination, car number and initials, charges collected, and amount of reparation due under the findings of the Commission. This statement should be submitted with freight bills covering same to defendants for verification by them. Upon receipt of statement so prepared and verified, together with paid expense bills, the Commission will take the matter up with the view to the issuance of an order of reparation. J. E. Bryant Co. v. F. W. & D. C. Ry. Co., 28 I. C. C. 594, 598.

(b) To obtain reparation the consignors named in the complaint will be expected to prepare statements showing, as to each shipment upon which reparation is claimed, the date of the movement, point of origin, point of destination, route, weight, car number and in-

itials, rate charged, and amount of reparation claimed upon the basis of our findings herein. They should also show by whom the freight was paid, and, if not paid in the first instance by the consignor, should be accompanied by stipulation or other appropriate evidence of such facts as will enable the Commission to determine whether the consignor is entitled to reparation. These statements should be submitted with the freight bills to the defendant for verification. Upon receipt of such additional data the matter of reparation will have further consideration. Omaha Grain Exchange v. C. & A. R. R., 32 I. C. C. 597, 601.

(c) Affidavits can not be accepted as evidence for the purpose of identifying parties by whom freight charges were actually borne if objected to. Griffing v. C. & N. W. Ry. Co., 32 I. C. C. 283, 286.

(d) Paid freight bills alone do not identify parties by whom charges were actually borne. Griffing v. C. & N. W. Ry. Co., 32 I. C. C. 283, 286.

REPORTS

See Accounting; Electric Lines, I (a).

REPRODUCTION VALUE

See Evidence, §49.

RESHIPPING RATES

See Advanced Rates, §5 (3) (c), §17 (cc), (oo); Concentrating Rates and Privileges, (d); Evidence, §13 (1) (e); Facilities and Privileges, §11½, §15, §18; Through Routes and Joint Rates, §11 (2) (l), §24 (j), §25 (g).

RETURNED SHIPMENTS

See Reduced Rates, §5.

REWEIGHING

See Weights and Weighing, §6.

RISK

See Classification, §9; Evidence, §52; Reasonableness of Rates, §30½.

RIVER CROSSINGS

See Advanced Rates, §5 (3) (c); Bridge Tolls; Claims, §2 (a); Class Rates, §2 (ff); Differentials, §5 (a), (b), §6 (b); Discrimination, §4 (a); Equalization of Rates, §4 (3) (a), §3 (b), (c), (e), §4 (1) (b); Evidence, §14 (1) (w), §14 (5) (s), (t), (u); Long and Short Hauls, §7 (a), (g), (h), (i), (l), (o); Proportional Rates, I (i), II (m); Reasonableness of Rates, §28 (w), (4b); Through Routes and Joint Rates, §13 (k).

ROUND TRIP TICKETS

See Passenger Fares and Facilties, §7½.

ROUTING AND MISROUTING.

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
- §1½. In general.

II. CARRIER'S DUTY TO TRANSPORT.
- §2. Accustomed or natural route.
- §3. Conflict in billing between rate and route.
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- §4. Direct and cheapest available route.
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- §5½. Particular junction.
- §6. Right of carrier to route.
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III. LIABILITY FOR MISROUTING.
- §7¾. In general.
- §8. Burden of proof.
- §9. Measure of damages.
- §10. Parties to make refund.
- §11. Reparation in general.
- §12. Unpublished rate.

CROSS REFERENCES

See Advanced rates, §2½ (aa); Claims, §2 (s); Class Rates, §2 (s); Concentrating Rates and Privileges, (a); Demurrage, §2 (q); Drayage, (b), (e); Export Rates and Facilities, III (b); Express Companies, V; Switch Tracks and Switching, §4 (c); Through Routes and Joint Rates; Track Storage, III (b).

I. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

(a) Since the Interstate Commerce Act, although it gives the right to route to a shipper, does not prescribe a penalty for violation of such provision, it so occupies the field as to exclude from application a state statute which provides for a penalty in case of violating the shipper's instructions for routing. Mitchell v. G. S. & A. Ru. Co. (S. C., 1914), 83 S. E. 261.

(b) Movement of whiskey from Chicago to Los Angeles involved an out-of-line haul to Ray Junction and return of 200 miles, and ratos to and from that point were assessed there being no other basis for reconsignment. Reparation awarded. Goodhart-Hartman Co. v. S. P. Co., Unrep. Op. A-781.

(c) Carrier quoted a rate of 25c on staves from Ellsworth Falls, Me., to Shediac, N. B. A rate of 26 1-2c was charged. Lowest rate on file with Commission is 28 1-2c, making an undercharge of $9.41. HELD, not misrouting. Independent Cooperage Co. v. M. C. R. R. Co., Unrep. Op. A-891.

§1½. In General.

(a) The "like circumstances and conditions" referred to in section 2 of the Act are those which arise within the field of haulage, and do not include competition. The shippers who desire to avail themselves of a water-and-rail route must be given equal treatment with those who ship all rail. Any discrimination which exists must not exceed that which is warranted by the differences in the circumstances and conditions of the haul over the rail lines. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 392.

II. CARRIER'S DUTY TO TRANSPORT.

§2. Accustomed or natural route.

(a) Traffic should not be forced into roundabout and unnatural routes. Rates on Cottonseed and Its Products, 28 I. C. C. 219, 221.

(b) In ripening season trainloads move to Jacksonville and Savannah, where they are broken up and some of them go forward via water lines and others via Atlantic Coast Despatch. These movements are referred to as "consigned routings." R. R. Comm'rs of Fla. v. S. Exp. Co., 28 I. C. C. 634, 636.

(c) Shipment forwarded to non-agency point not found to have been misrouted. Ohio Iron & Metal Co. v. S. F. Ry. Co., 28 I. C. C. 703, 705.

(d) In the absence of routing instructions carrier cannot be required to route for convenience of unloading. Middleburg Stone Co. v. B. & O. R. R. Co., Unrep. Op. A491.

(e) The discontinuance of a temporary physical connection of two lines renders the maintenance of rates via such route impossible. Lumber Rates from Thebes, Ill., 31 I. C. C. 15, 17.

(f) Objections against closing certain gateways was the possible effect it might have in the matter of securing equipment because of return loading agreements under which cars must be routed directly to the home line. Not sufficient where movement is restricted via gateway of natural route. California-Colorado Lumber Rates, 30 I. C. C. 461, 463.

(g) Carrier should be permitted to withdraw from a circuitous route if it does not obtain reasonable compensation. Rates on Grain and Grain Products, 30 I. C. C. 16, 17.

(h) The Grand Trunk route to Milwaukee does not meet the needs of the fruit shippers west of Grand Rapids. Milwaukee Produce & Fruit Exchange v. Crosby Transportation Co., 30 I. C. C. 653, 656.

(i) Routes from the South via Deepwater and Norfolk to Victoria, Va., are markedly circuitous compared with other lines connecting with Virginian Ry. at points intermediate to Deepwater and Norfolk. American Lumber & Mfg. Co. v. Miss. Central R. R. Co., Unrep. Op. A-726.

(j) Wheat and corn move to points of origin intermediate between Kansas City and destination via rather circuitous routes. Southwestern Missouri Miller's Club v. St. L. & S. F. R. R. Co., Unrep. Op. A-728.

(k) The route over which coal moves via the L. & N. R. R. and its connections from mines in Tennessee and Kentucky to Charlotte, N. C., is circuitous and rates not found unreasonable. Reparation denied. Yarbrough & Bellinger Co. v. L. & N. R. R. Co., Unrep. Op. A-733.

(l) The route of the L. H. & St. L. Ry. from Louisville to all points named in C. F. A. territory is markedly circuitous. Bower & Co. v. L. H. & St. L. Ry. Co., Unrep. Op. A-744.

(m) Where a bill of lading on an interstate shipment designated the terminal carrier and the car was delivered by a connecting carrier to the defendant, the terminal carrier which did not reach the plant of the consignee, such terminal carrier is liable in damages independent of the Interstate Commerce Act to the consignee for unreasonable delay in returning the car to its junction point to be transported by the correct carrier to the consignee's plant. Mitchell v. G. S. & A. Ry. Co. (S. C., 1914), 83 S. E. 261.

§3. Conflict in Billing Between Rate and Route.

See Bills of Lading, §9 (3).

(a) Express package with destination and routing marked thereon by shipper was offered for transportation, with receipt already made out by shipper showing different but correct routing. HELD, that carriers was not responsible for charges incurred in transporting the shipment in accordance with the routing marked on the package. Brackett Co. v. G. N. Express Co., 29 I. C. C. 667.

(b) When shipper prepares bill of lading, providing for carriage to particular destination, and marks a different and erroneous address on package, carrier is not responsible for transporting to destination named on package, though corrected destination is shown by bill of lading. Brackett Co. v. G. N. Express Co., 29 I. C. C. 667, 668.

(c) In the absence of routing instructions, it is the duty of the initial carrier to forward shipment via route over which lower rate is applied, and if such lower rate is named in bill of lading, to inquire as to route desired. Forester Lumber Co. v. S. Ry. Co., Unrep. Op. A-610.

(a) Reparation awarded on account of misrouting by initial carrier of roofing slate from Bangor, Pa., to Valier, Pa., moving interstate. Duty of carrier's agent to ascertain, before forwarding shipment, whether instructions as to rate or route shall govern where same do not coincide. Bangor National Slate Co. v. L. C. R. R. Co., Unrep. Op. A-794.

§3½. Conflict Between Billing and Shipping Ticket.

(a) Where bills of lading and shipping orders are prepared by the shipper and the shipper notes upon the bill of lading certain instructions which it fails to note on the shipping order, the carrier cannot be held liable for misrouting if it complies with the instructions shown on the shipping order. American Agricultural Chemical Co. v. B. & A. R. R. Co., 28 I. C. C. 398, 401.

§4. Direct and Cheapest Available Route.

(a) It is in the public interest, as well as in the interest of the carriers, that traffic should be handled by reasonably direct routes which can be operated at the least expense. Haverhill Box Board Co. v. B. & A. R. R. Co., 28 I. C. C. 336, 338.

(b) If the shipper had tendered its traffic unrouted, it would have been the duty of the initial carrier to forward it via the cheapest available route. American Agricultural Chemical Co. v. B. & A. R. R. Co., 28 I. C. C. 398, 400.

(c) Distance is an important element in determining whether routings are or would be satisfactory. United States v. U. P. R. R. Co., 28 I. C. C. 518, 522.

(d) As to an intermediate line accepting a shipment at a junction point without full routing to destination, the Commission has held that such line will be held responsible for any excess charges that may directly accrue from an error in forwarding the shipment via any other than the cheapest available route. Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co., 28 I. C. C. 703, 705.

(e) Shipment forwarded via route taking higher combination. HELD, misrouting and reparation awarded. New Roads Oil Mill & Mfg. Co. v. T. & P. Ry. Co., Unrep. Op. A-120; Lagomarcini-Grupe Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-122.

(f) Shipment forwarded by carrier via route taking combination rate, while lower joint rate in effect via route which carrier should have forwarded shipment. HELD, misrouting and reparation awarded. Hoerr v. C. & N. W. Ry. Co., Unrep. Op. A-177.

(g) Shipment forwarded via route taking higher rate. HELD. misrouting

and reparation awarded. Whiteker Bros. v. C. & N. W. Ry. Co., Unrep. Op. A-218.

(h) Shipment forwarded via junction taking higher combination rate. HELD, misrouting and reparation awarded. Gamble-Robinson Commission Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-322.

(i) Reparation awarded for failure of carriers to route shipment of coal from Itasca, Wis., to Omaha, Neb., via route taking lower rate in absence of instructions. Baum Coal Co. v. C. & N. W. Ry. Co., Unrep. Op. A-334.

(j) Carrier forwarded shipment of apples from Salem, Neb., to Red Wing, Minn., via junction taking higher combination rate. HELD, misrouting, and reparation awarded. Gamble-Robinson Commission Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-339.

(k) Carrier having failed to forward shipments of cement from Gas, Kan., to Alhambra and Pasadena, Cal., in accordance with routing instructions, reparation awarded for misrouting. Kansas Portland Cement Co. v. M. K. & T. Ry. Co., Unrep. Op. A-353.

(l) In absence of routing instructions carrier failed to route shipment of returned empty mineral-water bottles from Belleville, Ill., to Sheboygan, Wis., via awarded. Sheboygan Mineral Water Co. v. L. & N. R. R. Co., Unrep. Op. A-371.

(m) Damages awarded because defendants misrouted the shipments by not forwarding them via the route taking the lower combinations of intermediate rates. Sioux City Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A401.

(n) In the absence of routing instructions defendant should route via an available combination rate, which was less than a joint rate that applied on the said shipment. Foster Lumber Co. v. C. & N. W. Ry. Co., Unrep. Op. A426.

(o) Through error shipment moved via circuitous route taking higher rate. Reparation awarded. Floran v. Wells-Fargo & Co., Unrep. Op. A-572.

(p) Carrier failed to route shipments via cheapest available route. Reparation awarded. McMurty & Co. v. N. & W. Ry. Co., Unrep. Op. A-580.

(q) Shipment of lumber from Ironton, Ohio, to Sault Ste. Marie, Mich., moved via route taking higher rate. Reparation awarded. American Lumber & Mfg. Co. v. D. T. & I. Ry. Co., Unrep. Op. A-584.

(r) Shipment of corn from Remsen, Ia., to Kansas City, Mo., might have been shipped via the Illinois Central to Council Bluffs, involving a one-line haul only, and a lower rate secured thereby, but reparation denied. Flanley Grain Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-638.

(s) Reparation awarded on shipment of lumber from Ashland, Ky., to Sault Ste. Marie, Ont., found to have been misrouted as carrier failed to forward shipment via route over which lower rate applied. American Lumber & Mfg. Co. v. C. & O. Ry. Co., Unrep. Op. A-655.

(t) No routing instructions having been given, initial carrier should have forwarded shipment of lumber from Ashland, Ky., to Sault Ste. Marie, Ont., via route over which lower rate applied. American Lumber & Mfg. Co. v. C. & O. Ry. Co., Unrep. Op. A-655.

(u) Reparation awarded because of misrouting of logs from Lauderville, Miss., to Chattanooga, Tenn., where not specifically routed by complainant. Berry Lumber & Stave Co. v. M. & O. R. R. Co., Unrep. Op. A-771.

(v) Obligation upon agent of initial carrier to send shipment of coal via cheapest route, consistent with routing instructions of consignor. Reparation awarded on account of misrouting. Serat v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-784.

(w) Reparation awarded on account of misrouting lumber from Poplar Bluff, Mo., to Coffeyville, Kans., and for overcharges. Carrier was obligated to forward shipment via cheapest route. Fullerton-Powell Hardwood Lumber Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-822.

(x) Rate on potatoes from Cloverly, Colo., to Dalhart, Tex., via two available routes was 58c. Rate via route of movement not found unreasonable and shipment not found to have been misrouted. Caudle v. U. P. R. R. Co., Unrep. Op. A-873.

(y) Shipments of millet seed from Harris and Osgood, Mo., to Omaha, Neb., delivered to carrier unrouted, moved via shortest route, taking higher rate. Not found to have been misrouted. Clark v. C. M. & St. P. Ry. Co., Unrep. Op. A-897.

(z) On shipments of cherries from North Yakima, Wash., to Chicago, Ill., diverted at Minneapolis, Minn., no rout-

ing instructions were given for the haul from Minneapolis to Chicago, and carrier failed to route shipments via cheapest route. Reparation awarded. Yakima County Horticultural Union v. Northern Express Co., Unrep. Op. A-916.

§5. Lower Rate via Competing Line.

See Evidence, §47.

(a) In view of the lower earnings by the break-bulk route, carriers should, perhaps not be required to maintain lower rates via this route than via the car-ferry or all-rail routes. Break-Bulk Rates on Grain, 30 I. C. C. 357, 363.

§5½. Particular Junction.

(a) Complainants, iron and steel brokers at Chicago, attacked certain demurrage, drayage and switching charges, aggregating $144.25, collected at Portsmouth, Ohio, in connection with the transportation of two carloads of scrap iron from Milwaukee, Wis., to Portsmouth, due to misrouting of the shipments by defendants. The cars were originally consigned to parties at Newport, Ky., but while in transit, complainant purchased the consignment from the original shipper and directed the C. M. & St. P. Ry. to divert it to Portsmouth, but gave no instructions as to routing, except that shipments should be forwarded only at a rate of $3.40 per gross ton, and new bills of lading so providing were issued by the C. M. & St. P. Ry. showing routing via the E. J. & E. and C. C. & L. R. Rs. The C. C. & L. R. R. having no rails to Portsmouth, the E. J. & E. R. R. altered the routing to the C. & O. Ry. The tariff in effect at the time named the rate of $3.40 as applicable via the C. M. & St. P., E. J. & E., C. C. & L., and either the C. & O., N. & W., or B. & O. S. W. R. Rs. and provided for applications of rules and regulations of the individual carriers with respect to switching, drayage and demurrage. The C. & O. R. R. had no such rules, but the B. & O. S. W. R. R. tariff showed the consignee at Portsmouth to be located on its tracks and those of the N. & W. Ry. The rails of the C. & O. R. R. only reached South Portsmouth, Ky., and traffic for Portsmouth was loaded from cars to drays, and the drays ferried across the river to Portsmouth. Consignee's plant was actually located at New Boston, O., 4 miles from Portsmouth proper, and the tariff naming the rate to Portsmouth named the same rate to that point. Consignee demanding delivery at its plant, the cars were held up until demurrage charges had accrued. They were finally drayed to the B. & O. S. W. R. R. tracks at a cost of 1c per 100 lbs., and switched by the latter to consignee's plant at a cost of $4 per car. Complainant contended (1) that the C. & O. R. R. should not have accepted shipments for points beyond its rails, (2) that the C. M. & St. P. Ry. was negligent in not routing to secure delivery without additional expense, and (3) that the intermediate lines, in undertaking to furnish routing, should junction taking lower rate. Reparation have done so via a routing taking the rate prescribed by the shipper. HELD, (1) the C. & O. R. R., having tendered delivery at its own terminal, which was refused by consignee, was neither negligent nor did it exceed its rights in accepting and transporting the shipments; (2) that the C. M. & St. P. Ry. was under no obligation to do more than consign the shipments via transportation lines parties to the rate indicated by the shipper; and (3) having elected to consign to Portsmouth, it was the shipper's duty to have informed the carriers of the delivery required. Complaint dismissed. Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co., 28 I. C. C. 703.

(b) In the absence of tariff provisions to the contrary, the transportation rates shown in a carrier's tariffs to a given point include delivery only on its own rails, and shippers desiring delivery on the rails of another carrier ordinarily must bear the additional reasonable switching charges incident to such delivery. Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co., 28 I. C. C. 703, 705.

(c) Instructions given to forward shipment via certain point at which lumber could be dressed. Combination rate applicable. There was an available route between same points carrying joint rate with privilege of dressing. HELD, not misrouting, instructions having been followed. Hettler Lumber Co. v. M. C. R. R. Co., Unrep. Op. A302.

(d) Routing instructions specified lines, but did not specify junction point. Forwarded by carrier via route carrying joint rate, which was higher than via another route over which there was a lower combination rate. HELD, misrouting, and reparation awarded. United Kansas Portland Cement Co. v M. P. Ry. Co., Unrep. Op. A321.

(e) Shipment forwarded via junction taking higher combination rate. HELD, misrouting, and reparation awarded. Gamble-Robinson Fruit Co. v. C. B. & Q. R. R. Co., Unrep. Op. A322; Gamble-Robinson Commission Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A339.

(f) Shipment of apples from Sorenson, Mich., to Minneapolis, Minn., not found to have been misrouted because line noted in routing instructions as delivering line was not given line haul. Gamble-Robinson Commission Co. v. A & B. R. Ry. Co., Unrep. Op. A395.

(g) The U. P. R. R. accepted the conclusions of the Commission in Lumber Rates from Oregon and Washington to eastern points, 29 I. C. C. 609, directing that the Colorado gateways be kept open for general traffic between exclusive points of that system in Oregon and Washington and points on and east of the Missouri River. On rehearing it appeared that the connections ordinarily entitled to the long haul as originating carriers on westbound traffic made no objection to a cancellation of gateways, the only protestants whose interests were prejudiced being shippers of fruit and lumber. The U. P. lines were the short line between the Missouri River and their stations in Oregon and Washington, and afforded the best service because of the one-line haul. HELD, that the gateways might be closed for general traffic, the U. P. lines to restore the routes and privileges theretofore existing on lumber and fruit. Lumber Rates from Oregon and Washington to Eastern Points, 31 I. C. C. 191.

(h) By the provisions of section 3 carriers are prohibited from charging more for traffic between the same points routed over one connecting carrier than for that routed over another, unless the service which they perform is different in the one case than in the other. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 391.

(i) Conference ruling 286-f does not contemplate that initial carrier shall be required to ascertain if competing line can carry shipment at a less rate, and in that event turn it over to such line. Laclede-Christy Clay Products Co. v. M. P. Ry. Co., Unrep. Op. A-780.

§6. Right of Carrier to Route.

See Transportation, §5 (j).

(a) Section 15 of the Act, as amended in 1910, providing that in all cases where at the time of delivery of a shipment, two or more through routes shall have been established, the shipper shall have the right to designate the route, does not apply to a shipment made in 1907. C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 103 N. E. 839. On rehearing.

§7. Shipper's Instructions.

See Absorption of Charges, §3 (e); Bills of Lading, §10; Demurrage, §2 (c); Through Routes and Joint Rates, §4 (a), (e), VI.

(a) Under the Act, the shipper is given the right to designate the movement of his shipment. Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 654.

(b) Shipment forwarded in accordance with routing instructions, although lower rate in effect. HELD, not misrouting and complaint dismissed. Ploughe v. C. B. & Q. R. R. Co., Unrep Op. A101; Bristol Door & Lumber Co. v. S. Ry. Co., Unrep. Op. A206.

(c) Shipments forwarded via route specifically instructed by shippers. HELD, not misrouting and complaint dismissed. Ploughe v. C. & N. W. Ry. Co., A155; Dunbar-Hansen Co. v. C. & E. I. R. R. Co., Unrep. Op. A250. Vehicle Supply Co. v. L. Ry. & N. Co., Unrep. Op. A252.

(d) Shipment not found to have been misrouted, routing instructions having been followed as to feeding cattle at East Buffalo, N. Y., which necessitated a switching charge not absorbed by carriers. Swift Beef Co., Ltd., v. C. P. Ry. Co., Unrep. Op. A284.

(dd) Shipments of lumber from Claremont and Kershaw, S. C., to Philadelphia and Atlantic City, via Potomac Yards, Va., held to have been forwarded according to routing instructions given. Reparation denied. Forester Lumber Co. v. S. Ry. Co., Unrep. Op. A-610.

(e) On two shipments of hay to Long Dock, N. J., complainant specifically routed one via N. Y. N. H. & H. R. R. to Harlem owing to an embargo against shipments to Long Dock. This, defendant considered sufficient instructions for the second car and forwarded same via such route. Complainant accepted delivery at Harlem. HELD, not misrouting and demurrage and track storage charges prop-

erly assessed. American Hay Co. v. B. & M. R. R., Unrep. Op. A286.

(ee) Shipment moved in accordance with routing instructions, although lower rate in effect via another route. HELD, not misrouted and complaint dismissed. Madera Co. v. G. H. & S. A. Ry. Co., Unrep. Op. A-564.

(f) Routing instructions followed which requested delivery via line which did not absorb switching charges. HELD, not misrouting. Hedden-Clark Lumber Co. v. B. & O. R. R. Co., Unrep. Op. A301.

(g) Instructions given to forward shipment via certain point at which lumber could be dressed. Combination rate applicable. There was an available route between same points carrying joint rate with privilege of dressing. HELD, not misrouting, routing instructions having been followed. Hettler Lumber Co. v. M. C. R. R. Co., Unrep. Op. A302.

(h) Reparation denied on basis of lower combination rate in effect via different route, complainant having specifically routed shipments. Hinton Fruit & Produce Co. v. C. & O. Ry. Co., Unrep. Op. A312.

(i) Routing instructions specified lines, but did not specify junction point. Forwarded by carrier via route carrying joint rate which was higher than via another route, over which there was a lower combination rate. HELD, misrouting and reparation awarded. United Kansas Portland Cement Co. v. M. P. Ry. Co., Unrep. Op. A321.

(j) Damages awarded for failure of carrier to route shipments of switching ties from Clearfield, Ky., to Cadillac, Mich., via junction designated by consignor. Fullerton-Powell Hardwood Lumber Co. v. M. & N. F. R. R. Co., Unrep. Op. A367.

(k) Shipment of apples from Sorenson, Mich., to Minneapolis, Minn., not found to have been misrouted because line noted in routing instructions as delivering line was not given line haul. Gamble-Robinson Commission Co. v. A. & B. R. Ry. Co., Unrep. Op. A395.

(a) The provision of section 15, giving shippers the right to designate routing is inflexible and nothing in the nature of exceptions or exemptions has been promulgated by the Commission. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108.

(m) It is a violation of section 15 for a carrier to deny a shipper the benefit of a through rate on cotton concentrated in transit unless the shipper surrenders to the carrier the right to dictate intermediate routing. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108.

(n) Where a through route exists the shipper has the right to dictate the intermediate and terminal routing. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106. 108.

(o) Carrier not liable where error resulted from fault of shipper in marking package. Brackett Co. v. G. N. Express Co., 29 I. C. C. 667, 668.

(p) According to routing instructions shipment should have moved, taking a combination through rate; misrouted and reparation awarded on the basis of combination through rate. Weaver v. W. S. R. R. Co., Unrep. Op. A505.

(q) If shipper does not avail himself of the joint through rate, but routes by another route and a higher combination rate applies, HELD, that reparation cannot be awarded upon the basis of the joint through rate. Noble v. D. T. & I. Ry. Co., Unrep. Op. A510.

(r) Error in naming the destination is upon the shipper, and carriers cannot be held responsible for misrouting. Beaver Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A545.

(s) The rule that a shipper is bound by his routing instructions is subject to the limitation that the rate over the route specified by the shipper must be reasonable. Hoover, Owens, Rentschler Co. v. C. H. & D. Ry. Co., 31 I. C. C. 550, 551.

(t) Complainant held responsible for additional charges accruing by reason of peaches being routed via a competing express company who could make delivery earlier. Ozark Fruit Growers' Ass'n v. U. S. Exp. Co., Unrep. Op. A-736.

(u) Complainants exercised their right to direct the routing of lumber from Blythewood, S. C., to Philadelphia, Pa., and that movement via Potomac Yards, Va., was in accordance with the instructions given. Wood & Skilton v. S. Ry. Co., Unrep. Op. A-747.

(v) Shipments of lumber from Blythewood, S. C., to Philadelphia, Pa.,

not found to have been misrouted, defendants having observed routing instructions on bill of lading. Wood & Skilton v. S. Ry. Co., Unrep. Op. A-747.

(w) Section 15 of the Act to regulate commerce, as amended, insures to shippers the right to route their shipments, and no exceptions or regulations effecting this provision of the statute have been promulgated by the Commission and no stipulation in the bill of lading can operate to exempt the carrier from the duty imposed by law. Morse Lum. Co. v. L. & N. R. R., 33 I. C. C. 571, 572.

(x) Reparation awarded on account of misrouting shipment of coal from Royalton, Ill., to Trenton, Mo. Obligation upon agent of initial carrier to send shipment via cheapest route, consistent with consignor's routing instructions. Serat v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-784.

(y) Reparation awarded on account of misrouting of two carloads of shelled corn from Evander, Iowa, to Kansas City, Mo., carrier disregarding routing instructions and shipment moving entire distance over its own line at a higher rate. McCaull-Dinsmore Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-786.

(z) Reparation awarded on oats reshipped from Peoria, Ill., to Birmingham, Ala., found to have been misrouted from East St. Louis, Ill., by initial carrier having disregarded specific routing instructions. Bartlett Co. v. C. P. & St. L. R. R. Co., Unrep. Op. A-792.

(aa) Shipper's instructions were absolute and unqualified to change destination of mining timbers to Gila, Ariz., and left nothing to discretion of carrier. Back haul charges accruing on account of shipment having passed Gila before order to divert was given not found unreasonable. Calumet & Arizona Mining Co. v. S. P. Co., Unrep. Op. A-825.

(bb) Complainant shipped a car of sugar from Crockett, Cal., to Goldfield, Nev. The rate via Los Angeles was $1.81 1-2; that via the short line, $1.54. The carrier's agent billed the shipment via Los Angeles, but collected at the $1.54 rate. The bill of lading carried that routing, as specified by complainant, showed the weight, and bore the word "prepaid," but neither stated the rate nor the amount of the charges. At Goldfield, additional charges based on the $1.81 1-2 rate were collected. Under Conference Rulings Bulletin No. 7, the obligation rested on the carrier's agent to refrain from executing a bill of lading containing provisions which were contradictory and impossible of execution; and it was made his duty, where rate and route were both designated in shipping instructions and the rate did not apply to the route designated to ascertain whether rate or route should be followed. HELD, that the ruling did not apply, since the bill of lading contained no provisions which could not be lawfully applied. The mistake of the agent as to the proper rate constituted only a case of erroneous billing, and it was the duty of the carrier to collect the lawful rate, whether more or less than the rate erroneously applied. Goldfield Cases, 34 I. C. C. 360, 376.

(cc) Since the Interstate Commerce Act, although it gives the right to route to a shipper, does not prescribe a penalty for violation of such provision, it so occupies the field as to exclude from application a state statute which provides for a penalty in case of violation the shipper's instructions for routing. Mitchell v. G. S. & A. Ry. Co. (S. Car), 83 S. E. 261.

§7½. Washouts.

(a) A carload of yellow pine lumber originating at Sanford, Ala., on the L. & N. R. R. and consigned to complainant at Middletown, N. Y., was routed via the Erie R. R. While in transit, but before it reached the Erie R. R., complainant directed that rne to divert it to Maybrook. On account of floods, the initial carrier, without consulting either shipper or consignee, forwarded the shipment at a higher rate over another route to Middletown, from which point it was reshipped to Maybrook. The bill of lading authorized the carrier to re-route in case of physical necessity. HELD, that the L. & N. R. R. had no right to divert the shipment from the route specified in the bill of lading, any stipulation in the bill to the contrary notwithstanding, and that therefore it misrouted the shipment. Reparation awarded. Morse Lum. Co. v. L. & N. R. R., 33 I. C. C., 571.

(b) Washouts on connecting lines afforded initial carriers no excuse for disregarding shippers' routing instructions. Morse Lum. Co. v. L. & N. R. R., 33 I. C. C., 571, 572.

(c) Reparation awarded because of

misrouting lumber from Mill Creek and Jenningston, W. Va., to Gettysburg Junction, Pa., where agent of carrier omitted Gettysburg Junction from way bill and shipments moved to terminals of carrier and were back-hauled to destination. Kay v. Dry Fork R. R. Co., Unrep. Op. A-770.

III. LIABILITY FOR MISROUTING.

§7¾. In General.

(a) Shipment of one refrigerator, k. d., from Grand Haven, Mich., to Mount Clare, Nebr., through error in transfer slip of initial carrier was billed to Mount Clare, Nev. Reparation awarded. Lee-Coit-Adreesen Hardware Co. v. Crosby Transportation Co., Unrep. Op. A-944.

§10. Parties to Make Refund.

(a) Reparation awarded against initial carrier for damage due to misrouting company material from Ambler, Pa., to Fair Oaks, Ark. St. Louis Southwestern Ry. Co. v. P. & R. Ry. Co., Unrep. Op. A-783.

(b) Where a bill of lading on an interstate shipment designated the terminal carrier and the car was delivered by a connecting carrier to the defendant, the terminal carrier which did not reach the plant of the consignee, such terminal carrier is liable in damages independent of the Interstate Commerce Act to the consignee for unreasonable delay in returning the car to its junction point to be transported by the correct carrier to the consignee's plant. Mitchell v. G. S. & A. Ry. Co. (S. Car.), 83 S. E. 261.

§11. Reparation in General.

(a) Complainant required to pay drayage charges of $17.39 at Chicago, Ill., on account of misrouting of shipment of green coffee from Brooklyn, N. Y. Reparation awarded. Arbuckle Bros. v. Old Dominion S. S. Co., Unrep. Op. A-550.

(b) Carrier's agent erroneously inserted in waybill additional routing which resulted in misrouting of shipment. Reparation awarded for drayage charges in making delivery. Commercial Coal Mining Co. v. P. R. R. Co., Unrep. Op. A-721.

§12. Unpublished Rate.

(a) No rate applicable on box shooks from Flagstaff, Ariz., to Globe, Ariz., via intrastate route. Shipment routed interstate. After shipment was made box shooks were included with articles taking lumber rate. Reparation awarded. Arizona Lumber & Timber Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-920.

SCALEAGE AND SHRINKAGE

See Weights and Weighing, §7.

SEASON RATES.

CROSS REFERENCES

See Reasonableness of Rates, §35.

(a) The practice of rail carriers to maintain during the season of open navigation lower rates than at other seasons, in order to meet water competition, is not unlawful, provided the maximum rates are not unreasonable and the lower rates do not operate to undue prejudice of any shipper or locality. N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215.

(b) Defendants not required to maintain a lower minimum during certain months of the year than they maintain during other months. Miller & Co. v. C. & N. W. Ry. Co., Unrep. Op. A-746.

(c) Lower rate during period of navigation to meet competition are not unlawful if not unduly prejudicial to any shipper or locality. New York Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215.

SHIPPERS ONE-LINE SCALE

See Claims, §2 (t).

SHRINKAGE RATES.

(a) Assuming local rates to be reasonable, a carrier cannot be compelled on through traffic to shrink such rates to absorb other local rates of another carrier beyond a designated destination. Kansas City & M. Rate Cancellation, 28 I. C. C. 640, 643.

SLEEPING CAR RATES.

CROSS REFERENCES

See Advanced Rates, §2½ (l); Evidence, §18 (cc).

(a) Following hearings in Montreal on January 23 and 24, 1911, orders went approving the basis of maximum sleeping and parlor car tolls on the lines of railway subject to the Canadian

Board's jurisdiction. These orders made provision for publication of the tariffs so approved in at least two consecutive weekly issues of the Canada Gazette. These tariffs, therefore, covered the maximum rates legally applicable on lines subject to the board's jurisdiction.

To take the Grand Trunk Tariff C. R. C. E-1989 as typical, the provision contained as to drawing room and compartment car fares is as follows:

"Drawing Rooms in Standard Sleeping Cars.—Three and one-halft (3½) times charge for lower berths, sufficient being added to make the charge end in a multiple of one dollar ($1.00). Minimum charge six dollars ($6.00).

"Compartments in Standard Sleeping Cars.—Two and four-fifths times charge for lower berths, sufficient being added to make the charge end in a multiple of fifty cents ($0.50), minimum charge five dollars ($5.00).

"Drawing Room in Parlor Cars or for Day Runs in Standard Sleeping Cars.—Six (6) times charge for seats, not exceeding charge for drawing room in night service between same points.

"Compartments on Day Runs of Standard Sleeping Cars.—Four (4) times charge for seats, not exceeding charge for compartment in night service between same points."

This accommodation was available on the payment of the above fares to the holder of one passenger ticket.

In February of the present year tariffs were filed by the railways providing for additional passenger fares in case of exclusive occupancy of a compartment or a drawing room. The following excerpt from Grand Trunk Tariff C. R. C. E-1989 is typical of the arrangement:

"A minimum of one and one-half adult passage tickets (including one and one-half extra fare tickets on extra fare trains between points where extra fares apply) will be required for the exclusive occupancy of a compartment and two adult passage tickets (including two extra fare tickets in extra fare trains between points where extra fares apply) for the exclusive occupancy of a drawing room in addition to proper sleeping and parlor car tickets."

Following this the board by its Order 21413 of February 27, 1914, suspended, as to their operation between points both of which were in Canada, the tariffs of certain railways subject to its jurisdiction, the names of these railways being set out in the order in question.

The matter was heard on the 17th of March. The position put forward by the railways at the hearing was in substance that there was not an adequate payment being made for the use of the compartment, or of the drawing room.

It was further stated that under existing arrangements an individual could, on payment of the appropriate compartment or drawing room fare, have the use of this exclusive accommodation on one passenger ticket, and it was stated that this worked detrimentally, in that on occasion two individuals might desire to have the accommodation in question, but would be prevented from doing so on account of its already being purchased by one traveler. The effect of this from the railway's standpoint was that where two passenger tickets might have been sold in connection with the accommodation in question only one had been sold. From what was said such an occurrence must be relatively infrequent. In the course of the investigation which ended in January, 1911, it was testified that only about 5½ per cent of the total passenger traffic of the Canadian Pacific was carried in sleeping cars. It was stated by Mr. Flintoft, for the C. R. at the present hearing, that about 3 per cent of the sleeping car traffic was represented by the case where an individual has the exclusive occupancy of the drawing room. These are mere averages, of course, and cannot be taken as being necessarily final. It would, however, appear on these computations that the grievance complained of was concerned with only a small fraction of 1 per cent of the total passenger traffic. HELD, it does not appear that the hypothetical two individuals who would use the accommodation, if it were not already occupied exclusively by one person, will, on this account, abstain from traveling; and if they do not abstain from traveling the railway will be in the same position as to passenger fares. Whether two passenger fares are received in connection with the use of a section and one for a drawing room, or vice versa, will not affect the passenger returns of the railways, since in either case three passenger tickets are purchased.

There was not at the hearing an application by the railways to raise the standard Pullman rates. There was in effect an application to increase the passenger rate under certain conditions. The case for the increase of the pas-

senger rate has not been made out, and the order of suspension above referred to should be replaced by an order disallowing the tariffs within the scope set out by the order.

As has been indicated, it is contended that at times an individual may have the exclusive occupancy of a drawing room or of a compartment when two individuals desire this accommodation. It, no doubt, would be a convenience under such circumstances for the two individuals in question to have the first chance of purchasing the accommodation. If the railways desire to cover this situation it would seem that a rule could be drafted providing that compartment or drawing room accommodation will not be sold to an individual for his exclusive occupancy until either within a certain time before the train leaves, or after the train is in motion. And in this way the question of the convenience of the two individuals so often referred to during the hearing could be adequately provided for. Can. Ry. Board Judgments, Vol. IV, No. 5, p. 142.

(b) Complainants attacked the existing sleeping-car rates of $2 for a lower berth and $1.60 for an upper berth between Sioux Falls, S. D., and St. Paul and Minneapolis, Minn., as unreasonable per se. Both the Pullman Co. (on C. St. P. M. & O. Ry. trains) and the G. N. Ry. operate sleeping cars between Sioux Falls and St. Paul, over respective distances of 238 and 248 miles. The Sioux Falls rates are extended 72 miles west to Mitchell, S. D., on the G. N. Ry. Pullman rates break at Luverne, Minn., 29 miles east of Sioux Falls and Great Northern rates at Garretson, S. D., 18 miles north, taking $1.50 for lower and $1.25 for upper berths. From St. Paul to Huron, Redfield and Aberdeen, S. D., for distances of 308, 365 and 315 miles, the rates were also but $1.50 and $1.25, but these rates had not proved remunerative. From Omaha Neb., to Stuart, Neb., and Salem, S. D., the lower berth rates were $2 for distances of 224 and 221 miles. The berth-mile rate between the twin cities and Sioux was 8 mills, between Minneapolis and Mitchell 6.5 mills, and between St. Paul and Yankton, 6.4 mills. HELD, that complainants had not sustained the burden of proof, and that the existing sleeping car rates between the twin cities and Sioux Falls were not shown to be unreasonable. Complaint dismissed. Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654.

(c) The mere fact that a sleeping car company realizes 12 per cent per annum on the property invested in a particular run does not suffice to meet the burden of proof upon complainants to prove existing rates to be unreasonable. Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 658.

(d) The value to the passenger of sleeping-car occupancy can not be gauged by exactly the same standards as passenger transportation by day. To the latter, mileage, in the absence of unusual conditions, may be applied as a fair rule of the value of the service. The bare service of transportation to the occupant of a sleeping car, however, has been covered in the first instance by the passenger fare paid. The value of the occupancy of a sleeping car over and above the value of being carried a certain distance is found primarily in obtaining a night's rest under as comfortable conditions as compatible with railroad travel, essentially a night's lodgings; and secondly, in the keeping intact for the transaction of business the daylight hours which otherwise would be spent in covering distance. If the physical conditions under which transportation is conducted were invariably the same, if the speed of sleeping cars were uniformly the same, if the traffic density on all sleeping-car lines were the same, and if detraining during the night imposed no discomfort, mileage might possibly be taken as a measure of the value of sleeping-car occupancy. But it would then be a fair test because it would roughly measure the advantage of a night's occupancy of the sleeper to the passenger and the cost of service to the carrier. What the patron of a sleeper seeks first is a night's rest, and for this he pays as he would for a hotel room, for a unit service, and this service is approximately the same whether the car be hauled 200 or 300 miles during the sleeping hours. Whether a berth has been in use four hours or ten hours, as a rule, it cannot again during the same night be made a source of revenue to the carrier. Hence, berth-mile rates are of little comparative value, and are not controlling in fixing rates for the occupancy of sleeping cars.

Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 657.

(e) The Commission has not undertaken to prescribe what is a reasonable rate of return upon property employed in a particular service, nor that the rates of return upon all services shall be uniform; hence, the mere showing that specific rates attacked yield a goodly profit is not conclusive as to their unreasonableness. Where the rates for a particular service, such as a full night's occupancy of a sleeper are fairly uniform, the reduction of such rates wherever they afford a good profit coupled with maintenance of the rates wherever they result in loss would materially level the average of profits generally. Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C.

(f) A provision in the contract of employment between the Pullman Company and a porter by which the latter released all railroad corporations over whose lines the cars of that company might be operated while he was travelling in its service "from all claims for liability of any nature or character whatsoever on account of any personal injury or death" is valid. Robinson v. B. & O. R. R. Co., 35 Sup. Ct., 491.

SPECIAL CONTRACTS.

I. CONTROL AND REGULATION.
§1. Constitutionality of Act.
II. LEGALITY AND EFFECT SINCE PASSAGE OF ACT.
§2. In general.
III. LIABILITY.
§3. Criminal liability.
§4. Damages for breach.
(1) Jurisdiction of Commission.
§5. Discrimination through contract.
IV. ACTIONS TO ENFORCE.
§6. Defenses.
V. AS EVIDENCE OF REASONABLE RATES.
§7. In general.

CROSS REFERENCES

See Act to Regulate Commerce, II (r); Advanced Rates, §13 (a), (b); Cars and Car Supply, IV; Commodities Clause, II (g); Credit Account, (a), (b); Crimes, §2½ (a), (b); Discrimination, §3 (I), §5½ (g); Evidence, §15, §27, §32 (n); Express Companies, §8; Facilities and Privileges, §15 (d); Interstate Commerce Commission, §1 (m); Loss and Damage, §8; Reasonableness of Rates, §2 (c); Released Rates, §6 (b); Tariffs, §3 (1), (d); Water Carriers, §6 (b).

II. LEGALITY AND EFFECT SINCE PASSAGE OF ACT.

§2. In General.

(a) The passage of the Hepburn Act of 1906 rendered nugatory all prior agreements of carriers to issue annual passes in exchange for right-of-way grants, such act inhibiting carriers from demanding or receiving greater, less or different compensations than those specified in their published tariffs; and where, under such circumstances, a pass has been recalled and the issuance of another refused, an action for specific performance will not lie. But the carrier should account to the grantor for the value of the right of way, less what he has already received in the way of free transportation. L. & N. Ry. Co. v. Crowe (Ky., 1913), 160 S. W. 759, 760.

(aa) The fact that one portion of a contract is illegal under the Interstate Commerce Act vitiates the whole contract and prevents its enforcement. Lewis, Leonhardt & Co. v. Southern Ry. Co., 217 Fed. 321, 328.

(b) An understanding between a carrier and shippers for the establishment and maintenance of a differential between different groups of points of production will not be enforced, it being the carrier's duty to charge a reasonable rate for the service performed; that is to say, a rate which is neither unreasonably high, nor so low as to be non-compensatory or impose a burden upon other traffic. Lumber Rates from the Southwest to Points North, 29 I. C. C. 1.

(bb) The right and duties of carriers in the apportionment of available car supply must be determined from the Act to Regulate Commerce, and not from any contract which they may choose to make. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505.

(c) Contract between P. M. and St. Paul roads cannot be held as a valid objection to P. M. affording reconsign-

ment service. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 655.

(d) A private agreement between shipper and carrier for a rate other than the prescribed one is an absolute nullity. Central Ry. Co. of N. J. v. Maurer (Pa., 1913), 88 Atl. 791, 793.

(e) Under section 6 of the Interstate Commerce Act, requiring the schedules of carriers to state separately all terminal charges, a charge by a shipper for "spotting" cars on its own tracks in its own yard, never published as a terminal charge, is not enforceable against the carrier. N. Y. Cent. & H. Ry. Co. v. General Electric Co. (N. Y. Trial Term., 1914), 146 N. Y., Sup. 322, 326.

(f) A carrier's contract to pay the shipper 20c per ton for services rendered by the shipper in "spotting" cars on the shipper's tracks in its yards, never published as a "terminal charge," nor in any manner, except in the through rate, constitutes a contract to pay a rebate, within the prohibition of the Interstate Commerce Act. N. Y. Cent. & H. Ry. Co. v. General Electric Co. (N. Y. Trial Term, 1914), 146 N. Y., Sup. 322, 326.

(g) The Carmack amendment does not deprive the carrier of the right to make with the shipper a reasonable contract providing for notice of loss or damage, or a reasonable limitation upon the time of bringing an action for the recovery thereof. Ray v. M. K. & T. Ry. Co. (Kan., 1913), 133 Pac. 847, 849.

(h) The provision of the Hepburn Act permitting a railroad company to issue free transportation to its employes and members of their families is an exception to the rule that a stipulation in a free pass given by a carrier, to the effect that the person accepting it assumes all risks of injury in transportation, is enforceable. As between carrier and employe, the privilege and benefit of being afforded free transportation may be regarded as part of the consideration for the employe's services, and treated as an element of value within the contemplation of both parties at the time of entering into the contract of employment. C. & W. C. Ry. Co. v. Thompson, 80 S. E. (Ga., 1913), 1097, 1099, affirming, 79 S. E. 242.

(i) A contract between shippers and carrier which bound the carrier not only to transport certain cattle from Uvalde, Tex., to National Stock Yards, Ill., and deliver them in good condition by a certain hour of a certain day, but also bound the carrier to water and feed the cattle but once en route, in order that they might be very hungry and thirsty, so that they might imbibe large quantities of water just before being sold, and each beef thereby gain 50 lbs., and the "watered stock" be unloaded on the market of the National Stockyards, was, so far as it contemplated service not extended to everyone, discriminatory and in violation of the Elkins Act. St. L. I. M. & S. Ry. Co. v. West Bros. (Tex. Civ. App., 1913), 159 S. W. 142, 144.

(jkl). Under the federal regulations governing interstate shipments, the carrier, by a mere stipulation in an independent contract, such as a lease of an elevator, having no connection with the contract of shipment of the goods, relieves itself of its liabilities as a common carrier. It can do this only in the mode pointed out in such regulations, so that all shippers will be treated alike, which would not be the case if defendant were allowed to absolve itself by a clause in a contract leasing a piece of property to the shipper. Morrison Grain Co. v. Missouri Pac. Ry. Co. (Mo., 1914), 170 S. W. 404, 407.

(m) The parties could not lawfully make any contract about the interstate carriage of goods that is not authorized by the published tariff. Zoller Hop Co. v. So. Pac. Co., 143, 931, 935.

(n) Every contract or agreement under which a shipment is moved impliedly includes the terms of the act to regulate commerce, and anything in such contract or agreement contrary to that Act is void in that the parties contract with reference to the law. So. Pac. Co. v. Frye & Bruhn, 143 Pac. 163, 165.

(o) The parties could not lawfully make any contract about the interstate carriage of goods that is not authorized by the published tariff. Zoller Hop Co., v. So. Pac. Co., 143 Pac. 931, 935.

(p) The Rock Island Lines had operated a stock train on Sundays, Tuesdays and Thursdays of each week from Keota, Ia., to Chicago, Ill., for about 10 years. The agent at Keota agreed with the plaintiff to furnish a car for this train on one of the days, but that day the train did not run, whereby delay resulted in the hauling of plaintiff's livestock, resulting in shrinkage. HELD, that the train was not an extra train, but one

regularly operated and the contract that the livestock should be transported on a certain day was not an engagement for a special service, prohibited by the Interstate Commerce Act. J. W. Stewart & Son v. C. R. I. & P. Ry. Co. (Ia. 1915), 151 N. W. 485, 487.

(q) A contract cannot be made in violation of the rates fixed by the Interstate Commerce Commission that would bind either the shipper or the carrier. It is just as unlawful to charge too little as it is to charge too much. Jordan v. Southern Ry. Co., (S. C. 1915), 84 S. E., 871, 872.

(r) In order to support a reasonable stipulation of exemption from liability in an interstate contract of carriage, it is not essential that there be an independent consideration apart from that expressed in the bill of lading, nor is it necessary that an alternative contract be presented to the shippers for his choice. If the contract contains a lawful provision for exemption, and if it has been shown that the damage resulted from the excepted cause, the burden is on the plaintiff to show that the loss was occassioned by the carrier's own negligence, from which it could not be exempted. Canby v. Merchants' & Miners Transp. Co., (Ga. 1915) 85 S. E., 361, 362.

(s) A special contract with a particular shipper, whereby a carrier agrees for the published rate to expidite an interstate shipment of freight and deliver the same on a designated day, gives to the particular shipper an advantage over other shippers, and makes a discrimination in his favor which is prohibited by the Interstate Commerce Act, and hence such a contract is void. Norfolk Southern R. Co., v. White-Hurst (Va. 1915) 85 S. E., 458, 459.

(t) Special contracts with particular shippers, the effect of which is to discriminate against other shippers violate the Elkins Act. Norfolk Southern R. Co., v. White-Hurst (Va. 1915) 85 S. E., 458, 459.

(u) Since under the rules of the Interstate Commerce Commission reconsignment rules must be published by the carrier, it is not liable in damages for breach of a special oral contract under which it agreed to divert the shipment in an authorized way. Norfolk Southern R. Co., v. White-Hurst (Va. 1915) 85 S. E., 458.

III. LIABILITY.

§4. Damages for Breach.

§4. (1) Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) The Commission can have no control over the contract between the coal producer and his purchaser. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 25.

(b) Commission has no authority to administer a remedy in applications for relief based solely upon a contractual relationship between the parties. Alexandria Lumber Co., Ltd., v. L. R. & N. Co. Unrep. Op. A-710.

(c) The Interstate Commerce Commission cannot adjudicate contractual rights existing between shippers and carriers. Car-Ferry Allowance at Cheboygan, Mich., 32 I. C. C. 578, 580.

(d) The Interstate Commerce Commission cannot adjudicate contractual rights existing between shippers and carriers. Car-Ferry Allowances at Cheboygan, Mich., 32 I. C. C. 578, 581.

(e) The Commission has no power to enforce contractual arrangements respecting the rates and practices of carriers. Where a tap line has claimed and been accorded the status of a common carrier, its rates and practices are subject to all the tests and control to which other carriers must submit under the law, notwithstanding the terms of any agreement with a trunk line having relation to rates. The Tap Line Case, 34 I. C. C. 116, 118.

(f) The question of alleged damages resulting from non-fulfillment of a contract for track extension, oral or written, is one for determination by the Courts, and not by the Commission. Picher Lead Co. v. St. L. & S. F. R. R., 35 I. C. C. 45, 46.

§5 Discrimination Through Contract.

(a) The act of Congress prohibits discriminations, and no contract granting them, directly or indirectly, can lawfully be made or enforced in courts. Nor can liability be predicated upon the failure to perform them when made. Sanders v. A. C. L. R. Co. (S. C. 1915), 85 S. E. 167, 168.

(b) The defendant was required to file a schedule of rates of transportation with the Interstate Commerce Commis-

sion and prohibited from transportin property unless this were done, and it is to be presumed from being actually engaged in carrying freight to have performed this duty. See Act of Congress approved June 29, 1906. It is not pretended that the release or waiver of prior damages accruing to the shipper is included in the tariffs scheduled, nor would such a thing be possible in advance, for the rates, for like transportation of similar commodities must be the same and damages to different shippers, such as contemplated in this clause, will seldom, if ever, be the same. The consequence is that for one having no cause of action for breach of contract property is carried at precisely the compensation charged another from who is exacted, in addition thereto, the release of a valuable cause of action or one more valuable than that of another shipper contracting for the carriage of the same class of freight. The discrimination is so manifest that the discussion need not be prolonged. The cluase waiving or releasing any cause of action the shipper may have had is void. J. W. Stewart & Son v. C. R. I. & P. Co., (Ia. 1915), 151 N. W. 485, 487.

VI. ACTIONS TO ENFORCE.

§6. Defenses.

(a) The fact that one portion of a contract is illegal under the Interstate Commerce Act vitiates the whole contract and prevents its enforcement. Lewis, Leonhardt & Co. v. Southern Ry. Co., Fed. 321, 328.

SPECIAL DAMAGES.

See Loss and Damage, §10¾ (a).

(a) The fact that the Interstate Commerce Commission may have recommended the payment of special damage which flows from violation of a federal law is no reason why the state court may not take cognizance of a suit based in part upon another result of that act which, when connected with many other acts of a different nature, will show a willful and malicious purpose, and give rise to this common-law cause of action. L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky., 1914), 170 S. W. 633, 642.

SPECIAL RATES AND SERVICES.

See Additional Charges and Services; Allowances, §8 (2), (c); §8 (5), (b); Facilities and Privileges, §12½; Precooling; Refrigeration, §2 (d).

(a) Under section 15 of the Interstate Commerce Act a carrier may perform accessorial non-transportation services for a shipper, provided it be done without unjust discrimination, but cannot be compelled to do so; and while a carrier may permit a shipper to render a service connected with transportation, and may make a just and reasonable allowance therefore, it cannot be compelled to permit such substituted performance of any of its own obligations. It follows, therefore, that when the Commission, instead of merely fixing a maximum allowance to be paid to lumber mill tap lines or to the proprietary companies for switching and other services rendered with the consent of the trunk line in connection with through shipments, directs establishment by the trunk lines of joint rates with such tap lines, and the payment of not exceeding a specified division out of such joint rate for such services, that the Commission holds such services to be not merely services connected with transportation, but the services of an interstate common carrier engaged in such transportation. L. & P. Ry. Co. v. United States, 209 Fed. 244, 249.

(b) A common carrier may as to some of its work act in a strictly private capacity, and it may as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services; and it is clearly within the power of the Commission to prohibit a payment provided in a tariff for such services. L. & P. Ry. Co. v. United States, 209 Fed. 244, 250.

(c) A label need be attached to only one package in each shipment of perishable property, such label to indicate the number of packages in the shipment. In re Express Rates, 28 I. C. C. 132, 136.

(d) Lime is a commodity requiring perishable freight service. Iowa-Minnesota Cement Rates, 28 I. C. C. 477, 481.

(dd) Less-than-carload rates are applicable to a different class of traffic from that embraced in carload and peddler-car shipments. Rates on Packing-house Products, 28 I. C. C. 599, 600.

(e) When ripening season in Florida comes on, material impairment of the

passenger schedule is avoided by putting on special express trains. Railroad Commissioners of Florida v. S. Exp. Co., 28 I. C. C. 634, 636.

(f) Necessity for expedited service for perishable freight. Railroad Commissioners of Florida v. S. Exp. Co., 28 I. C. C. 634, 637.

(g) An excess of $3 over the regular fare for passenger transportation between Chicago and New York City on fast trains not found to be unreasonable or unjustly discriminatory. Harrington v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A227.

(h) It is not an unreasonable or unlawful discrimination for a carrier to expedite a switching service for a class of goods, which, like strawberries, are perishable in their nature, provided the service is extended to all shippers of that class of goods. Johnson v. N. J. N. H. & H. Ry. Co., 88 Atl. 988, 991. (Me., 1913.)

(i) In the last analysis sound economics and valid law coincide. Neither the shipper nor the carrier can insist upon a wasteful or expensive service for which the consumer must ultimately pay. New York Shippers' Protective Assn. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 441.

(j) Free transportation of caretaker is a special service. Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 23.

(k) Frost protection that is sufficient for potatoes in bulk is ample for bulk shipments of apples, onions and carrots, and more than is needed for cabbage. New York Shippers' Protective Association v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 439.

(l) It is difficult to see how a carrier can justify the giving of special service to a single shipper, unless it be upon the ground that the cost of the service is to such an extent reduced that it can properly, in the protection of its own just interest, tender the tariff. Minimum Weight on Fresh Meat and Other Commodities, 30 I. C. C. 349, 350.

(m) For loading and unloading and all other special services, carrier may properly make a reasonable charge. Dunnage Allowance, 30 I. C. C. 538, 543.

(n) When box cars are used for shipments of produce in winter a stove is placed between the bulkheads, and an attendant is necessary. New York Shippers' Protective Association v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 439.

(o) It is difficult to see how a carrier can justify the giving of special service to a single shipper, unless it be upon the ground that the cost of the service is to such an extent reduced that it can properly, in the protection of its own just interest, tender the tariff. Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349, 350.

(p) Large amounts paid out by way of absorption, on account of special services. Five Per Cent Case, 31 I. C. C. 351, 373, 409.

(q) Liberal ratings on furniture and emigrants' movables in south and west to encourage immigration. Globe Werniecke Co. v. B. & O. R. R. Co., 31 I. C. C. 274, 276.

(r) Rail carriers entering New York from the west and north filed tariffs proposing to increase rates, or to reduce service performed in connection with delivery and receipt of freight at New York terminals. STORAGE REGULATIONS: Domestic freight awaiting on the Jersey shore delivery or transshipments coastwise was held by the carriers 10 days without storage charges, charge for first 10 days thereafter 1c per 100 lbs. and for each succeeding 10 days ½c. It was proposed to reduce the free storage to 5 days, with a storage charge thereafter of 1c for each 10 days or fraction thereof. Domestic inbound freight might be held at railroad pier stations within the free lighterage limits 3 days without storage charge. It was proposed to limit the period to 2 days, with a storage charge of 3c per 100 lbs., for the succeeding 1½ days. Export less-than-carload freight was held at railroad pier stations 10 days without charge. It was proposed to reduce the free time to 2 days. A charge of 15c per ton was provided for the handling and storage for 6 months of heavy iron and steel articles and cooperage stock; on sawed stone 30c. An increased charge of 25c on iron and steel articles, 40c on cooperage stock, and 40c on sawed stone was proposed. HELD; (1) Proposed reduction of period of free storage on Jersey shore, from 10 to 5 days, justified as to domestic inbound freight for delivery at New York, but not justified as to freight intended for coastwise transshipment; (2) Proposed increased charge of 1c per 100 lbs. for each 10 days or fraction thereof

for storage on Jersey shore of freight for New York delivery after reduced free storage period, justified; (3) Proposed reduction of period of free storage at railroad pier stations of domestic inbound freight, from 3 to 2 days, and charge for succeeding 1½ days, not justified; (4) Proposed reduction of period of free storage of export less-than-carload freight at railroad pier stations from 10 to 2 days, not justified; (5) Proposed increased charges for handling and storing iron and steel articles, cooperage stock, and sawed stone, justified. LOADING AND UNLOADING REGULATIONS: Freight was loaded to and unloaded from lighters at either railroad piers or outside piers free of charge. At the latter an allowance not exceeding 12c per ton was made to shippers or consignees performing this service. It was proposed to discontinue the allowance at outside piers, imposing a charge of 12c per ton, and to impose a charge where freight was received from or delivered to lighters not owned or controlled by the carrier. Where shipper or consignee preferred car-float service, the carriers placed the cars on the floats without additional charge, the shipper receiving an allowance of 12c per ton. Under the proposed rules he must load or unload and no allowance was made. HELD: (1) That the proposed charge for loading or unloading from lighters at other than station piers or vessel of the carrier was not justified, since it would not discriminate between shippers of different commodities, and would also have the effect of increasing the transportation rate, and (2) proposed discontinuance of allowance to shippers or consignees for loading or unloading cars on floats, not justified because it would in effect increase the rate. LIGHTERAGE AND TOWING REGULATIONS: Less-than-carload lots of westbound lighterage free freight, received with carload freight, from the same shipper, at the same point and time, was granted free lighterage or floatage. It was proposed to charge 3c per 100 lbs., minimum $3.00, on the less-than-carload lot. It was also proposed to establish a minimum charge of $20.00, less 60c per ton, for each delivery of heavy articles, and withdraw free lighterage on pieces weighing from 3 to 20 tons where the lighterage order covered delivery of 50 tons or more to one harbor point. It was also proposed to increase the charges for towing freight to points on Gowanus' Canal, outside free lighterage limits. HELD, (1) Proposed charge of 3c per 100 lbs. on less-than-carload lots of westbound freight lightered or floated with carload lots, justified but proposed minimum charge of $3.00, not justified; (2) Proposed increased charges for lightering heavy articles, not justified; (3) Proposed increased charges for towing freight to points outside free lighterage limits, not justified. MINIMUM WEIGHT REGULATIONS: Free lighterage was given dressed poultry, butter, cheese, and eggs in lots of 10,000 lbs. or more. It was proposed to increase the minimum to 20,000 lbs. HELD, that the proposed minimum of 20,000 lbs. was not justified, but one of 15,000 lbs. might be established. DUNNAGE REGULATIONS: Expense of staking, wiring, or cleating shipments of lumber, telegraph poles, or similar lading were charged on the lading as follows: When material and labor furnished by carrier, $2.00 per car; when material by shipper or labor by carrier, 50c per car. It was proposed to charge in the former case from $4.00 to $7.50 per car, and in the latter $1.00 per car. HELD, that the proposed increased rates for staking, wiring, or cleating shipments of lumber, telegraph poles, etc., were justified. Lighterage and Storage Regulations at New York, 35 I. C. C. 47.

SPECIAL TRAINS

See Passenger Fares and Facilities, §7¾.

(a) Complainant attacked the charge of $1,260 collected by defendant for a special train from Yuma to Tucson, Arizona, alleging that it was unreasonable to the extent that it exceeded $880. The train was chartered on the morning of July 25, 1912, to expedite the arrival of a specialist summoned by complainant by telegraph from Los Angeles. The physician left Tucson with a through ticket over defendant's line to Los Angeles and without knowledge that a special train would be provided, the decision to use the same being reached while he was well on his way. The tariff charge for the special train was 125 fares. Complainant was allowed $7.60 for the unused portion of the ticket. The question is, whether the journey from Yuma to Tucson was part of an interstate journey or an intrastate journey beyond the jurisdiction of the Commission. Unquestionably it was the intention of the physician to make the journey continuously from Los Angeles to

Tucson on the regular train. The journey by special train from Yuma to Tucson was under a new contract subsequent to his own between defendant and complainant and without his knowledge or request. HELD, when the physician left the regular t rain and boarded the special train at Yuma, his contract with defendant ceased, and the charge imposed for the special train from Yuma to Tucson is beyond the Commission's jurisdiction. Wait Talcott v. Southern Pacific Co., 33 I. C. C. 292.

SPOTTING

See Additional Charges, (a), (b); Allowances, §8 (5); Interstate Commerce Commission, §3 (c); Special Contracts, §2 (e), (f); Weights and Weighing, §2½ (h).

SPUR TRACKS

See Transportation, §1 (h), §5 (a), (b).

STAKING

See Allowances, §8 (6).

STATE RATES

See Advanced Rates, §5 (7¼), §18 (7), (a), §19 (g); Common Carrier, §6½ (b); Courts, §10 (b); Discrimination, §1 (e), §11 (a), (c), (f), (g); Distance Rates, §3 (a); Evidence, §13 (6), §13 (1), (bb), §56 (a), §64 (f); Interstate Commerce Commission, §10; Long and Short Hauls, §4½ (d), §5 (f), (ll),; Reasonableness of Rates, §7½ (h), (t), (u), (v), (w); Through Routes and Joint Rates, §13 (u), (s), §13½ (g), §18 (f), §22 (o).

STATE REGULATION

See Act to Regulate Commerce, II (h), (s); Attorneys' Fees, (c); Claims, §11 (a); Courts, §11 (f), §12 (d), V; Evidence, §17 (h); Interstate Commerce, §4, §½ (c); Loss and Damage, §2, §13¾ (h); Passenger Fares and Facilities, §10 (e); Reparation, §7 (c), (g); Routing and Misrouting, §1 (a); Terminal Facilities, §7 (b), (c).

STATION-ORDER CARS

See Cars and Car Supply, §9⅞ (l).

STATUTE OF LIMITATIONS

See Claims, I; Reparation, §7.

STOCK YARD COMPANIES

(a) The Kansas City Stock Yards Company is not a common carrier in interstate commerce. A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Company, 33 I. C. C. 92.

(b) The Kansas City Stock Yards Company of Missouri is a public utility and its docks for loading and unloading live stock and tracks leading thereto are instrumentalities of public transportation for the use of which the trunk line live stock carriers serving Kansas City may lawfully pay even though shippers of live stock participate in the stock yards company's dividend. A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Company, 33 I. C. C. 9 2.

(c) Whether the trunk lines serving Kansas City can lawfully refuse to accept or deliver live stock shipments at the Kansas City stock yards or increase their present live stock rates to and from Kansas City on account of the stock yards company's charges for the use of its tracks or for switching cars over them are questions to be determined on complaint by shippers whenever the trunk lines change their present practices or rates. A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Company, 33 I. C. C. 92.

(d) The grant to a foreign corporation of the right to operate a stockyards does not carry with it the privilege of engaging in business as a common carrier. State v. Kansas City Stock Yards Co. of Mo. (Kan., 1915), 145 Pac. 831.

(e) A corporation engaged in operating stockyards, owning a track between such yards and the railroads over which stock is transported thereto, and making a charge to the railroad companies for each car moved over such track, in accordance with a tariff which it has filed with the Interstate Commerce Commission, to be regarded as engaging in business as a common carrier. State v. Kansas City Stock Yards Co. of Mo. (Kan., 1915), 145 Pac. 831.

(f) The Commission has no jurisdiction to determine whether the stock yards

company is estopped to demand compensation for the use of its tracks or for switching service over them. A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92.

STOCK HOLDERS

See Accounting, §1 (c); Common Carrier, §5.

STOPPAGE-IN-TRANSIT

See Facilities and Privileges, §15 (4a), (4k), (4b), (4e).

STORAGE.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CHARGES AND REGULATIONS.
§2. Reasonableness and discrimination in general.
III. TARIFFS AND CONSTRUCTION.
§3. In general.

CROSS REFERENCES

See Advanced Rates, §17 (h); Demurrage, §2 (l), (o), §3 (a), §10¾ (a); Explosives, (b); Export Rates and Facilities, VI; Express Companies, §35; Facilities and Privileges, §14, §15 (3l).

I. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

(a) Complainant attacked storage charges of $6.00 collected by the M. C. R. R. Co. resulting from the failure of the carrier to furnish complainant the name of the shipper when the shipment was tendered for delivery, complainant refusing for that reason to accept the shipment. A crated engine was shipped from Standing Stone, Pa., to Detroit, Mich., via the L. V. & M. C. R. R., consigned to the Detroit Engine Works, which is the trade name of complainant selling department. When tendered, acceptance was refused because the name of the shipper was not stated in the freight bill. Subsequently, a written notice was sent complainant which failed to state the name of the shipper. It appeared that it was not the custom of the M. C. R. R. to show the name of the shipper on the freight bills which accompanied shipment tendered to complainant for delivery or on notices for the arrival of shipments. HELD, it may be that in the case of shipments reconsigned in transit by the original consignee, the ultimate consignee is not entitled to demand that the delivering carrier shall furnish him the name of the original consignor. Since the filing of this complaint the Commission has concluded an investigation into the practices of carriers in respect to the issuance of freight bills and receipts, and in its opinion and report thereon has made recommendations which if adopted by the carriers, will go far to prevent a recurrence of the difficulties here complained of. In the Matter of Freight Bills, 29 I. C. C. 496. The defendants will be expected in the future, therefore, as to straight consignments, to state in their waybills and freight bills the name of the shipper. Michigan Steel Boat Co. v. M. C. R. R. Co., 32 I. C. C. 576.

(b) Single car shipment of shingles unloaded at Minnesota Transfer, Minn., and placed in open storage; subsequently reloaded by carrier into two open cars. Commission not authorized to determine responsibility for damage. Red Cedar Shingle Mfrs. Asso. v. M. & St. L. R. R. Co., Unrep. Op. A-880.

II. CHARGES AND REGULATIONS.

§2. Reasonableness and Discrimination in General.

(a) Complainant attacked a charge of $1 per day for the storage of a carload of lumber at Camden, N. J. After notice to remove the lumber, it was unloaded and stored by defendant, who repeatedly requested its removal, but it was not removed for over a year from the time of its arrival. The purpose of the $1 per day tariff was to prevent improper accumulation of freight at stations, rather than for gain or profit. Defendant's rules also provided that freight might be stored at a certain point in Philadelphia at a charge of $2 per month; but it appeared that defendant owned certain real estate in that city, and in order to stimulate shipment of lumber via its lines, instead of via the water route, established this low and non-compensatory charge. Complainant was a dealer in Philadelphia, and thus had the benefit of this special charge. HELD, that the charges complained of were neither unreasonable nor discriminatory. Complaint dismissed. Parry & Co. v. P. R. R. Co., 29 I. C. C. 559.

(b) Storage charges not based upon value of service plus cost of insurance.

Storage Charges in C. F. A. Territory, 28 I. C. C. 372, 374.

(c) Charges found unreasonable on more dangerous explosives in that they provide for doubling of charges after 24 hours following expiration of free time, and on less dangerous in that they reduce the free time and doubling of charges. Storage Charges in C. F. A. Territory, 28 I. C. C. 372, 374.

(d) The Commission considered a proposed reduction of free storage time on hay, grain, flour and other grain products in freight sheds at New Orleans, La., from 96 to 72 hours, and proposed increases in storage charges. But 48 hours were allowed for the unloading of carload freight. Except as to hay, no good reason appeared why shippers should be allowed a longer time to remove commodities from the freight shed than from the car. Owing to a rule requiring hay to be weighed, inspected and graded by a licensed inspector, commission merchants were not free to sell their hay until the morning of the second day. Existing storage charges, applied after the expiration of free time, were: First 10 days, 1c per 100 lbs.; next 10 days and each succeeding 10 days, ¾c per 100 lbs. There being no public hay warehouses in the city, retailers found it convenient to use the carriers' freight sheds for warehouse purposes at these rates. Respondents accordingly increased the charges to: First 10 days, 1c per 100 lbs.; second 10 days, 1¼c ; third 10 days, 1½c; each succeeding 10 days, 2c. The existing schedules excluded Sundays and legal holidays in computing both free time and storage periods; the schedules under suspension included Sundays and holidays in both cases. HELD, that respondents had justified the reduction of free time from 96 to 72 hours, as well as the increased storage charges proposed. In reckoning free time for the purpose of assessing demurrage charges, Sundays and holidays should be excluded; but in reckoning the storage period after the expiration of free time, these days may be properly included. New Orleans Storage Rules and Regulations, 28 I. C. C. 605.

(e) It is no part of the duty of a common carrier by rail to furnish warehouses for the storage of articles transported, even though the convenience of its patrons may so require; and carriers may impose such charges as will compel the removal of freight from their depots and freight sheds. New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607.

(f) Advance in storage charges on traffic held in freight shed after expiration of free time justified. New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607.

(g) Tariff should be revised so that reduced rate will be applicable to blackstrap molasses, whether unloaded into storage tanks or transferred direct from vessel to tank cars. Molasses Rates from Mobile, 28 I. C. C. 666, 672.

(h) Storage charges on metal sign, which had been refused by consignee at Newmans Grove, Neb., after notice to consignor, not found unreasonable. Husikamp Bros. Co. v. C. & N. W. Ry. Co., Unrep. Op. A278.

(i) Defendant's tariff rule limiting storage of hay at pier No. 29, East River, N. Y., to no more than five carloads for any one consignee, any cars in excess of that number to be held at New London, Conn., or other points subject to storage or demurrage charge of $1 per car per day, not found unreasonable or unjustly prejudicial. American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659.

(j) Complainant, a fertilizer factory, attacked tariff provisions for storage charges on "dangerous articles other than explosives," in that they did not apply to sulphuric acid. Construction of Tariffs.—Sulphuric acid is used as a raw material, being shipped in quantities from Copper Hill, Tenn., to complainant's plants in Alabama, Georgia and South Carolina. The carriers published tariffs providing for storage charges, the purpose being to enforce prompt unloading of what was regarded as a dangerous article, of $2 per day for the first day after the usual free time, the charge being doubled after 48 hours. By paragraph 1805 of the Regulations for the Transportation of Explosives and Other Dangerous Articles the Commission provided that corrosive liquids including strong mineral acids and other strongly corrosive liquids that are liable to cause fires when mixed with chemicals or with organic matter, or are liable, in case of leakage from their shipping containers to damage other freight materially, should move under a white label; that is, such a label should be attached to the container. The tariffs attacked prescribe they apply to shipments of "dangerous articles other than explosives re-

quiring red, yellow, green or white I. C. C. labels." HELD, since sulphuric acid requires the use of a white label it follows the tariffs did apply to the shipments in question. Reasonableness of Storage Charges.—Complainant contended that sulphuric acid of the density of that shipped by it was not a dangerous article and the tariffs assessing charges in addition to demurrage charges for delay in unloading were unreasonable. The experience of complainant had been that losses for which claims were made have been nominal. The acid has a density of 60 degrees Baume, at a temperature of 60 degrees Fahrenheit, and at that density does not corrode iron; but is a dangerous substance unless carefully handled, that when diluted so that its density does not equal 50 degrees Baume, it becomes dangerous to iron. The acid at whatever density is dangerous to human beings and to some commodities that are regularly shipped, and when mixed with certain chemicals, it is combustible. Leakage of the acid is injurious to the rails of the carriers. It appears it is a dangerous article unless very carefully handled. Normally complainant can unload this acid within 48 hours, and the fact that it is dangerous to leave cars loaded with the acid standing in the yards presents a reason why the unloading should be effected within that time. Since the filing of the complaint the tariffs have been changed, so that the charge now is $2 per car per day when the commodity is not unloaded within 48 hours after 7 a. m. following notice of arrival. HELD, that the charges attacked were excessive and should not exceed $2 per day per car for shipments not unloaded within 48 hours after 7 a. m. following notice of arrival. Reparation awarded. International Agr. Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199.

(k) It is not unreasonable or unjust for carriers to require a payment in addition to the regular storage charges for failure to unload shipments of sulphuric acid within reasonable time. Int. Agr. Corpn. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201.

(l) Complainant attacked storage charges of $6.00 collected by the M. C. R. R. Co., resulting from the failure of the carrier to furnish complainant the name of the shipper when the shipment was tendered for delivery, complainant refusing for that reason to accept the shipment. A crated engine was shipped from Standing Stone, Pa., to Detroit, Mich., via the L. V. & M. C. R. R., consigned to the Detroit Engine Works, which is the trade name of complainant selling department. When tendered, shipment was refused because the name of the shipper was not stated in the freight bill, subsequently, a written notice was sent complainant which failed to state the name of the shipper. It appeared that it was not the custom of the M. C. R. R. to show the name of the shipper on the freight bills which accompanied shipment tendered to complainant for delivery or on notices for the arrival of shipments. HELD, it may be that in the case of shipments reconsigned in transit by the original consignee the ultimate consignee is not entitled to demand that the delivering carrier shall furnish him the name of the original consignor. Since the filing of this complaint the Commission has concluded an investigation into the practices of carriers in respect to the issuance of freight bills and receipts and in its opinion and report thereon has made recommendations which if adopted by the carriers, will go far to prevent a recurrence of the difficulties here complained of. In the Matter of Freight Bills, 29 I. C. C. 496. The defendants will be expected in the future, therefore, as to straight consignments, to state in their waybills and freight bills the name of the shipper. Michigan Steel Boat Co. v. M. C. R. R., 32 I. C. C. 576, 577.

(m) Storage should be prescribed to prevent congestion. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 281.

(n) A consignee of freight has no legal right to use a car as a warehouse or storage plant. Milwaukee Produce & Fruit Exch. v. C. & N. W. Ry. 35 I. C. C. 33, 35.

(o) Storage charges should properly apply to the yard or tracks where the evil sought to be remedied exists, and not elsewhere. Track-storage charges are but additional demurrage charges, made necessary by conditions which may exist at a particular yard or yards in the city. Milwaukee Produce & Fruit Exch. v. C. N. W. Ry., 35 I. C. C. 33, 35.

(p) Railroad companies are under obligation to store freight only for such period as may be required to afford shippers a reasonable opportunity to remove

it. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 56.

III. TARIFFS AND CONSTRUCTION.

§3. In General.

(a) In computing free time, Sundays and legal holidays should be excluded; but after expiration of free time, Sundays and legal holidays may be properly included. New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607.

(b) Payment in addition to ordinary demurrage as penalty for failure to unload sulphuric acid within reasonable time not unreasonable. International Agricultural Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201.

STORE DOOR DELIVERY

See Claims, §2 (I), (J); Class Rates, §2 (I); Classification, §22 (h); Evidence, §18 (q); Facilities and Privileges, §14½.

SUBSTITUTION OF TONNAGE.

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. LEGALITY OF SUBSTITUTING.
§2. In general.
III. POLICING BY CARRIERS.
§3. In general.

CROSS REFERENCES

See Facilities and Privileges, §15.

II. LEGALITY OF SUBSTITUTING.

§2. In General.

(a) Considering all the testimony, the Commission believes that the fabricators are correct in their assertion that unless substitution is allowed they will not be able to lawfully take advantage of the fabrication-in-transit service. Under the circumstances of this case, respondents should change their transit rules and regulations so as to specifically provide for substitution of material drawn from the lines of different carriers and different rate territories. They should further provide proper accounting and provisions for the cancellation of inbound billing to cover outbound shipments, local consumption, waste of shrinkage; frequent checking of unfabricated and fabricated material and billing on hand; and the cancellation of billing in excess of the fabricated and unfabricated material on hand, requiring the use of the oldest billing for that purpose. These rules should be made uniform in respondents' tariffs. All of these things should be planned and executed with such deliberation and care as will avoid the creation of other unjust discriminations, and with such a degree of supervision and effective policing that resort to unlawful practices may be impossible. Fabrication-in-Transit Charges, 29 I. C. C. 70, 89.

(b) It will be assumed that a carrier will not permit unlawful substitution of grain under a proposed rate any more than under an existing rate. Export Rates on Grain and Grain Products, 31 I. C. C. 617, 621.

(c) The Commission considered the reasonableness of regulations requiring shippers of grain at St. Louis, Mo., to surrender expense bills covering inbound shipments to obtain benefit of reshipping rates to central freight association and trunk line territories. There were no joint through rates from local Missouri points to these destinations, and the through rate, made up of the interstate rate to St. Louis plus the rate beyond was higher than the intrastate rate to St. Louis plus the rate beyond. In order to insure allocation of the interstate rate where grain was subsequently shipped out on the reshipping rate, carriers required unloading at St. Louis, and the surrender of expense bills complained of, defendants maintaining that the reshipping rate was a part of a through rate to which the shipper was entitled only where he had paid that part applicable for the haul to St. Louis. There was no commodity rate on the traffic in question, but while there was no class rate on grain to central freight association territory, there was to trunk line territory. HELD, that the regulation was reasonable on shipments to trunk line territory, but shipments to central freight association territory were entitled to move out on the reshipping rate regardless of point of origin or of rate on inbound shipments. Directed that case be reopened and heard with Southwestern Missouri Millers' Club v. C. & A. R. R. Co., Docket No. 6662, on notice. Merchants' Exchange of St. Louis v. B. & O. R. R. Co., 30 I. C. C. 700.

SUSPENSION OF RATES

See Advanced Rates, §1 (4); Interstate Commerce Commission, §11; Reduced Rates, §2.

SWITCH TRACKS AND SWITCHING.

I. CONTROL AND REGULATION.
§1. In general.
§2. Jurisdiction of Commission.
II. ABSORPTION OF SWITCHING.
§3. In general.
III. DISCRIMINATION AND REASONABLENESS OF CHARGES.
§4. In general.
§5. Incidental services.
§6. Reciprocal switching.
§7. Right to connection.
§8. Validity of regulations.
§9. Reparation.
§10. Tariffs and publication.
§11. Team Tracks.
IV. PROCEDURE AND PLEADING.
§12. In general.

CROSS REFERENCES

See Absorption of Charges; Additional Charges, (m), (p), (v); Cars, §7 (bc); Demurrage, §12 (c); Divisions, §4 (b); Drayage, (c); Evidence, §18 (ee), (k); Facilities and Privileges, §15 (y); Routing and Misrouting, §5½ (a), §7 (d), (f); Special Rates and Services, (h); Tariffs, §7 (k); Tap Lines;; Terminal Facilities, §2 (a), §3 (g), (h), (o); Through Routes and Joint Rates, §22 (b); Transportation, §5 (a), (b).

I. CONTROL AND REGULATION.

§1. In General.

(a) The effect upon interstate commerce of requiring under state authority that an interstate carrier move purely local freight between private spurs in the same city is so indirect and consequential that it cannot be said to deprive the carrier of rights secured by the commerce clause of the federal constitution. L. & N. R. R. Co. v. Hidgon, 34 Sup. Ct. 948; 234 U. S. 592; 58 L. ed. —.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) The findings of the Commission that certain industrial spur tracks in a certain city constitute a part of a carrier's terminals, and that under the conditions there existing the receipt and delivery of goods on such spurs was a like service as compared with the receipt and delivery of goods at team tracks and freight sheds, are conclusions of fact which, if based upon the evidence, are not open to review. Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 819; 58 L. ed. —; 234 U. S. —.

(b) The question whether the switching of carload freight by a carrier on industrial spur tracks is an additional service for which it is entitled to make a charge over and above the line-haul rate, or is merely a substituted service in lieu of a substantially similar terminal service included in the line-haul rate, but not rendered, is a question of fact to be determined according to the actual conditions of operation, and manifestly one upon which it is the province of the Commission to pass. Interstate Com. Com. v. A. T. & S. F. Ry. Co. 34 Sup. Ct. 814, 818; 58 L. ed. —; 234 U. S. —.

(c) In a proceeding to determine the propriety of switching charges absorbed by carriers, the Commission must consider them as though they were to be charged for by the railroad rendering the service, and paid for by the shipper. Detroit Switching Charges, 28 I. C. C. 494, 496.

(d) Under section three, as amended, it is for the Commission to say whether a carrier, in entering into arrangements for the exchange of freight with one connecting carrier, while declining to do so with another, is guilty of undue discrimination; that is, whether as a matter of fact, if a railroad opens its terminal to one connection it must open it to all. Waverly Oil Works Co. v. P. Ry. Co., 28 I. C. C. 621, 625.

(e) Where traffic is delivered to a carrier having a direct line by which it can transport to destination, the Commission is without authority to prescribe a system of switching charges, the effect of which would be to deliver the traffic to another carrier for a part of the transportation. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 630.

(f) As between two connecting carriers, the Commission is authorized to prescribe through joint rates to any point on the terminals of one from

points on the line of the other, and vice versa. B. A. & A. R. R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 586.

(g) The elimination by a carrier of a switching charge for interchange between the tracks of one carrier and industries located on the terminals of another, is a regulation affecting a rate, within section 15. Switching at Galesburg, Ill., 31 I. C. C. 294, 297.

(h) In determining what is a reasonable rate for the interchange movement, the Commission should take into consideration the circumstance that the use of the rate means that the terminal road is deprived of the line haul. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690.

(i) The Act imposes no requirement upon the Commission that in determining a reasonable charge for the interchange movement, it must in some way or other take into its calculations the factor that the charge may be absorbed by a competitor road. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690.

(j) The Interstate Commerce Commission considered the rate of $1 per ton charged for the interstate transportation of coal from Nashville to certain points in Kentucky, Texas, and Alabama and the switching practices of the carriers at Nashville. It found that the rate was unreasonable and should not exceed 80 to 90c per ton, and that the railroads should abstain from their then practice with respect to inter-switching interstate car load shipments of coal at Nashville, and from maintaining any different practices with respect to switching such shipments from and to the tracks of the Tennessee Central Railroad from that maintained with respect to similar shipments from and to their respective tracks, and should establish and maintain a practice permitting the inter-switching of such shipments from and to the lines of each and every defendant. The report of the Commission set forth the geographical location of the various points involved with the distances and routes; stated that the complainant had offered "innumerable exhibits" of comparison; that in all these instances the rate attacked yielded the greatest earnings and that the defendant had sought "in elaborate detail" to analyze these comparisons. The Commission simply and generally reviewed the evidence submitted, and met its specific findings as above noted. Traffic Bureau of Nashville v. Louisville & Nashville Railroad Company, 20 I. C. C. 533. HELD, that the report of the Commission was sufficiently definite to comply with the requirements of the Interstate Commerce Act, and it appearing therefrom that there was substantial evidence to support the Commission's orders, it could not be enjoined by a United States court. L. & N. R. Co. v. United States, 216 Fed. 672.

II. ABSORPTION OF SWITCHING.

See Absorption of Charges.

§3. In General.

See Absorption of Charges, §3 (a), (g).

(a) Commission not justified in requiring trunk line to absorb switching charge of terminal line. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 103.

(b) Under the practice generally in vogue and recognized by the Commission for a switching charge as imposed for a terminal delivery by a separate carrier, the line carrier can absorb or pay that switching charge, thus giving to the shipper the benefit of the through rate, including delivery. But for a joint rate to be established, the entire rate must be paid by the shipper and retained by the carrier. Waverly Oil Works Co. v. P. R. Co., 28 I. C. C. 621, 631.

(c) The Commission will not establish a mere switching charge which competitive carriers can absorb, and under which they obtain virtual use of expensive terminals. Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 627.

(d) Through the nature of coal and coke renders their transportation large-competitive commercially, this does not justify their exception from a general provision against the absorption of switching charges at a certain city. Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 556.

(e) In cases where traffic moves from the same points of origin, and the switching charge is absorbed in the one case and not in the other, there is a violation of section 2, as the existence of competition in the one case and not in the other does not constitute a substantial dissimilarity of circumstances and conditions. Richmond

Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 558.

(f) Complainant attacked the discontinuance by defendant carriers, the S. Ry. Co., the S. A. L. and the A. C. L., of indiscriminate absorption of connecting-line switching charges on carload traffic at Richmond, Va., the provision that such switching charges would be absorbed only when the carrier performing the transportation service was in competition for the traffic with the switching line, the discontinuance of connecting line switching on trap, peddler, and station-order cars, and the making of a charge for switching service when from industries on the line of the carrier performing the road haul, and challenged the resulting increased transportation charges as unreasonable and discriminatory between shippers in Richmond and against Richmond shippers as compared with shippers at Norfolk, Va., Memphis, Tenn., Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo. The C. & O. Ry. makes the absorption on all traffic to or from other than local points on its line, i. e., points not reached by any other line; while defendants, except as to coal and coke, absorb only on traffic to or from competitive points, i. e., points reached by competitive lines. To accommodate shipments by trap, peddler and station-order cars, an empty car must be placed at the industry having a private or assigned siding, there to be loaded with less-than-carload freight. Where such traffic is desired from connecting lines the charges made by the switching lines vary from $2 to $3.50, of which defendants absorb all over $2, for the purpose of placing all industries on a parity, whether or not the traffic is competitive; whereas the C. & O. and the R. F. & P. Rys., while refusing to absorb connecting-line switching on other than freight moving at carload rates, make no charge on 5,000 lbs. or more of freight rated third class or higher, when moving via their lines. The switching charges on intrastate shipment of fertilizer are absorbed by defendants because the Virginia railroad commission so requires. They are likewise absorbed at Norfolk, Va., on traffic from the N. & P. B. L., although the latter is not a competitor for line hauls. Like absorption by defendants at Louisville, Ky., and Memphis, Tenn., are compelled in the former case by the more liberal practice of competing lines, and in the latter by the distance of the business center from their terminals. HELD, that the refusal of defendants to absorb switching charges on some carload shipments at Richmond while absorbing such charges on other shipments to or from that point is unjust discrimination against the shippers required to pay such charges, and refusal of defendants to absorb switching charges on carload shipments at Norfolk is unjust discrimination against Richmond an.. traffic to and from that point. The charge of $2 on trap, peddler and station-order cars, considered solely as a charge for an accessorial service, does not appear unreasonable. Richmond Chamber of Commerce v. S. A. L., 30 I. C. C. 552.

(g) While switching charges may be absorbed, charges for a line haul, as distinguished from switching, cannot. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 691.

(h) Cancellation of absorption of switching charges at City Block and Jackson's Wharf stations on what is known as the "block route" in Baltimore, and elimination of industries located on extension of route on Thames street found unreasonable. Switching at Baltimore, Md., 30 I. C. C. 581, 584.

(i) The mere fact that railroad company desired to absorb the switching charge, and after the shipments moved provided for such absorption, is not sufficient basis for finding such charges to have been unreasonable. Lorillard Co. v. P. R. R. Co., Unrep. Op. A-556.

(j) Past voluntary absorption of intermediate switching charge does not alone afford a sound basis for requiring continuance thereof. Gravel and Sand Switching Charges at Chicago, 32 I. C. C. 291, 296.

(k) Refusal to absorb switching charges on crude oil at Erie, Kans., while making such absorptions on lumber, coal and brick, not found to result in undue prejudice. Great Western Oil Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-937.

(l) The Commission considered the proposal of the Wabash Ry. to discontinue its absorption of switching charges in the Chicago, Ill., switching district

on hay in carloads. Under the proposed change such charges would be paid by the shipper in addition to the line-haul rate. About 50 per cent of all hay transported to Chicago by the Wabash Ry. was there switched to points of delivery on the rails of other carriers. On 77 representative shipments, hauls averaging 267.6 miles, the total revenue was $2190.93, averaging $28.45 per car; total absorption paid, $676.90, averaging $8.79 per car, or about 31 per cent; leaving balance of $19.66 which would yield 5.9 mills per ton-mile. HELD that respondent had justified the cancellation of the absorption of switching charges. Order of suspension vacated. Rates on Hay to Chicago, 34 I. C. C. 150.

(m) By the amended act carriers may be compelled to make connection with spur tracks built by shippers or with a lateral line of railroad and to operate such switch tracks at a reasonable compensation therefor. Second Industrial Railways Case, 34 I. C. C. 596, 602.

III. DISCRIMINATION AND REASONABLENESS OF CHARGES.

§4. In General.

See Absorption of Charges, §5 (b), (f); Blanket Rates, §6 (g), §8 (bc); Cars and Car Supply, §7 (a); Claims, §2 (s); Class Rates, §2 (s); Discrimination, §4 (m); Reasonableness of Rates, §7½ (w); Terminal Facilities, §3 (m).

(a) The refusal of a carrier to accept from and move to another carrier's line, carload shipments of freight within its switching limits, while performing like service in connection with other carriers, is a clear discrimination. Buffalo, Rochester & Pittsburgh Ry. v. Pennsylvania Co., 29 I. C. C. 114, 118.

(b) Protestant objected to a proposed increase, from the existing rate of 11c per ton to a rate of 35c per ton, for switching cars from the Potomac yard, near Alexandria, Va., to Alexandria proper, as unreasonable. The yard was operated jointly by respondent and several other companies. On the traffic in question, respondent's engine took the car at the yard and hauled it over the line of another company about 2 miles to its yards, and placed it on a hold track. Subsequently, and by an independent movement, the car was taken another two miles to protestant's yard, the length of the entire haul being 4.77 miles. The switching charge covered the loaded car in and the empty car out, making in reality, four distinct switch movements. HELD, that while respondent had not justified the charge of 35c, the rate of 11c was too low. Rate fixed at 20c per ton. Alexandria, Va., Switching Charges, 29 I. C. C. 381.

(c) Complainants attacked the rate of 4c per 100 lbs., or $24 per car, charged for switching at Bellefont, Pa., two carloads of grain, from the point of interchange with the Central Ry. of Pa. to the plant of the consignee, a distance of one mile. Defendant's switching charge at Bellefont on traffic having its origin at and intended for strictly local points on its line or that of the Central Railway was $5; but otherwise the regular scale of class rates was applied, while in this case the class rate charged was the lowest in effect for a movement between given points on its lines. Consignee had directed complainants to deliver by defendant's line, and if they had been so routed there would have been no switching charges; but the complainants gave no routing instructions with respect to delivery, and the initial carrier had consequently routed by the N. Y. C. Ry. and the Central Ry. of Pa. It appeared that defendant's avowed policy was to avoid at all points so-called nominal per car switching charges on traffic from connections, except where the connecting carrier gave defendant the advantage of terminals as valuable as its own; that is to say, it attempted to make such charges as would insure the routing of traffic to give it line hauls. HELD, that the charge was plainly excessive to the extent that it exceeded $5 per car. Instructions of the consignee as to routing given and intermediary parties are of no significance however. Reparation awarded. Bottsford & Barrett v. P. R. R. Co., 29 I. C. C. 469.

(d) Charge of 50c per car where cars are switched to private scales for weighing, unless weights so ascertained were used for the assessment of freight charges, not found to be unlawful. American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C. 350.

(e) Rate of 5.2c on beer from Dubuque, Ia., to East Dubuque, Ill., involving two switching services, besides the use of bridge, not found unreasonable. East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427.

(f) The fact that there is a lower switching rate on excelsior wood is not sufficient to establish that the rate on beer between the same points is unreasonable. East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427.

(g) The Commission considered proposed increases in switching charges by the D. T. R. R., the M. C. R. R., and the P. M. R. R., in and about the City of Detroit. All railroads at Detroit voluntarily open their terminals to other railroads entering the city, imposing a switching charge, which is as a rule absorbed by the carrier enjoying the line haul. The switching services may be: (1) Transportation of car from junction with one line to junction with second line, the switching line having nothing to do with delivery of car; (2) moving car between private siding on switching road and junction point with connecting line; (3) movement between team track of switching road and junction with connecting line. For these services the M. C. R. R. and the P. M. R. R. charge $3 when the movement is between lines or to a private siding, and $4 when it is from the team tracks of the switching road; and it is proposed to increase the charge for the first two movements to $5 and for the last movement, to $8. The D. T. R. R. or "Outer Belt Line," about 14 miles long, circles about Detroit on the north, west and south, and will, when completed, connect with all railroads entering the city. Industries served by this line are located mainly at the two extremities. For a movement between two connecting lines or to a private siding upon this line the charge is, at the east end $3, and at the west end $3.50; and when the movement is from one terminal to the other, these two charges are added, making a total of $6.50. Where the movement is to a team track, $1 is added. It is proposed to make a uniform charge of $6 between points on the D. T. Ry., with $1 extra when the car moves to or from team tracks of that company. This road owns no cars, has but five switching engines, and represents an investment but slightly in excess of $1,000,000. Under the scale of tariffs above stated, the average receipts per car handled have been $3.61, and the average expenditures $4.92, leaving a deficit of $1.31, including interest at six per cent in operating expenses. The D. T. R. R. is controlled through stock ownership by the G. T., M. C., and L. S. railways, which may have influenced the rates charged by it. It had not in all cases permitted connection with its line. In order to induce the location of industries on its line, the D. T. R. R. provides the private tracks used by such industries at its own expense, by refunding to the industry so much for each car switched. HELD, that the present switching charges of the M. C. R. R. and P. M. R. R. are just and reasonable, and should not be exceeded for the future. The D. T. R. R. should permit all lines to connect with it, and its facilities should be open to all alike, upon the same terms. While the increases it proposes are not approved, it should be permitted to charge rates yielding a fair return upon the value of its property. A charge not exceeding $4.50 per car would probably be reasonable. Detroit Switching Charges. 28 I. C. C. 494.

(h) General statements on the part of the representative of a railroad testifying on its behalf, that it is felt by the company that the cost of conducting its terminals has so materially increased that it must have more revenue to put the road on a basis justifying the cost incurred in performing the switching service in question, furnishes no justification for an advance in switching charges. Detroit Switching Charges, 28 I. C. C. 494, 497.

(i) The Louisville & Nashville Terminal Co. was incorporated in 1903, its entire capital stock of $100,000 being owned by the L. & N. Ry. Of its $2,535,000 funded debt, bonds in the sum of $2,500,000 were in the hands of the public and the remainder in the treasury of the L. & N. R. R. The bonds were guaranteed by the L. & N. R. R. and the N. C. & St. L. R. R., and in 1896 all of its property at Nashville, Tenn., was leased for 999 years to the two companies jointly. Each lessee company had individually owned tracks which they operated independently of each other and of the terminal company, upon which industries were located. To and from these industries, and to and from those on the line of the terminal company, traffic of all kinds was freely interswitched by the L. & N. R. R. and the N. C. & St. L. R. R. Their joint and separately owned terminals were open to all noncompetitive traffic to and from the Tennessee Central R. R., except coal, against which they maintained a prohibitive tariff of 60c per ton. The L. & N. R. R. owned more than 70 per cent of the capital stock

of the N. C. & St. L. R. R. HELD, that the practice of defendants with regard to switching coal at Nashville was unreasonable and unjustly discriminated against shipments of coal from the Tennessee Central R. R. Co., and unduly preferred shipments from the lines each of the other. Reasonable practice requird. Traffic Bureau of Nashville, Tenn., v. L. & N. Ry. Co., 28 I. C. C. 533.

(j) That lower switching charges are in effect at Cleveland, O., than Pittsburgh. Pa., not found to constitute undue discrimination. Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 623.

(k) Complainant attacked a switching charge of 4c per 100 lbs., $16 to $24 per car, imposed by the Penn. Ry. Co. for the movement of cars with a tonnage of from 40,000 to 60,000 lbs., from complainant's factory, located on its tracks, to the point of connection with another carrier, by which the same were to be transported, as discriminatory compared with a switching charge of $2 per car made by the Pennsylvania lines at their Cleveland terminal. Besides the Penn. R. R. Co., the B. & O., P. & L. E. and the Wabash R. Rs. possess terminals at Pittsburgh, but these were far less extensive and much less valuable than those of the Pennsylvania. While large, the Pennsylvania terminals were none too extensive for the business of that company. The real purpose of the complaint was to so force down the switching charges that other lines might absorb them and thereby give to Pittsburgh industries the benefit of free switching. It appeared that the switching charges at Cleveland were uniformly absorbed by the various lines entering that city, so that shipments could be delivered or taken up at an industry without charge; but the rates charged for switching and the extent to which they are absorbed vary greatly in different parts of the United States. At Pittsburgh, the Pennsylvania Co., while declining to open its terminals to other systems entering the city, formed an arrangement with its own family lines, by which traffic reaching the city by any of them would be switched free of charge to any point on any of these lines, and would likewise be switched free to the shipper, where taken up within switching limits by any one of the family lines. But while these lines were independently operated, their ownership was identical. HELD, that it does not follow because a railroad establishes certain switching charges in one locality that it must apply the same rate in all localities; nor is there any unjust discrimination arising out of the circumstance that the different members of the Pennsylvania system accord the use of their terminals to one another while refusing it, on the same terms, to outside competitors. The Commission should not as a matter of discretion, even if it could as a matter of law, establish a mere switching charge which the competitors of the Pennsylvania lines could absorb and thus obtain the virtual use of the Pennsylvania terminals. But in any event, the Commission is empowered to require the Penn. R. R. to handle cars to and from industries on its terminal tracks by the establishment of joint rates from any point upon the terminals. The complainant not having applied for the fixing of joint rates, however, no order will be made to that effect, unless upon subsequent hearing it be shown that the carriers have failed to work out a system of rates based on these suggestions. Waverly Oil Works v. P. Ry. Co., 28 I. C. C. 621.

(l) While cases may easily be imagined where a railroad would be guilty of undue discrimination by reason of a diversity of switching charges between two localities served by it, it does not necessarily follow that the switching charges must in all cases be reduced to the level of the lowest charge imposed. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 624.

(m) In Gilmore & Co. v. C. & N. W. Ry. Co., 25 I. C. C. 403, rates of 20c per ton on bituminous and 10c on anthracite coal on carload shipments to Rose Hill, Ill., in excess of the charges to Ravenswood, a point 1½ miles nearer Chicago, were held discriminatory against Rose Hill, and that a proper spread between such points should not exceed 5c per net ton. Ravenswood was under the Chicago through rate, the line-haul carriers absorbing on bituminous coal $6 per car of the switching charges of 20c per ton from Chicago; while the rate to Rose Hill was a combination of the rate to Chicago plus a local of 30c per ton to Rose Hill, the carriers absorbing $4 per car of 80,000 lbs. or less and 10 for each additional ton. On anthracite coal, switching charges were absorbed to both points to the extent of $4 per car, regard-

less of weight. In attempting compliance with the order of the Commission, respondents raised the Ravenswood local to 25c and the line-haul carriers canceled the through rate and reduced absorption on bituminous coal from $6 to $4; leaving Ravenswood on a basis of 15c and 5c per ton higher on bituminous and anthracite than competitive points immediately south. Respondents contended that the Chicago switching district really terminated at Deering, south of Ravenswood; that farther north the residential district is reached, from which cars must be returned empty, affording no revenue; that on account of congested conditions freight traffic must there be diverted from the short line; and that coal for such points must be handled from an elevation and in the daytime, involving additional expense and justifying greater charges for switching. But it appeared that the traffic for Ravenswood and beyond had been handled for many years on the 20c basis, and that coal had been delivered on the Chicago rate basis to many other points outside of Chicago and farther removed therefrom than Ravenswood by several miles, HELD, that the proposed increase in rates to Ravenswood and reduction of absorption on such shipments by line haul carriers were not justified. Ordered that suspended rates be withdrawn. Chicago Switching Charges, 28 I. C. C. 677.

(n) Charges for the switching of coal from Galewood to Edgewater found to be discriminatory in favor of other points within the Chicago switching limits. Lill & Co. v. C. M. & St. P. Ry. Co., A258.

(o) The fact that traffic at certain stations on a block route terminal is congested, is no justification for the imposition of unreasonable charges on shippers and receivers of freight at such points. Switching at Baltimore, 30 I. C. C. 581, 583.

(p) The Commission considered the proposal of the B. A. & A. R. R. Co. to cancel its switching rates between industries located on its line in Arcade, N. Y., and a connection with the B. & S. Ry. in the village, leaving no rates in effect between such industries and the B. & S. Ry. The B. A. & A. R. R., 29 miles in length, extends from connection with the Erie R. R. at Attica through Arcade to a junction with the Penn. R. R. about 1½ miles beyond. Through routes and joint rates were in effect with the Erie R. R. and the Penn. R. R., and also with the B. & S. R. R. with respect to all points on the B. A. & A. R. R. except Arcade, shipments to and from which were handled on a switching charge. This switching charge of $3 per car on coal, the principal inbound commodity, yields substantially less than the divisions of the rate accorded by the Erie and Penn. R. R.'s, and was imposed on the B. A. & A. R. R. at a time when it was controlled by the B. & S. R. R. HELD, that the real controversy is one of divisions as between the B. A. & A. R. R. and the B. & S. Ry., and since nothing in the record justifies an increase in the charges to shippers at Arcade, approval of the proposed tariff cancelling switching charges is denied. No opinion expressed as to whether the present Arcade rate is the proper rate for these industries to pay. Switching at Arcade, N. Y., 30 I. C. C. 501.

(q) The Commission considered proposed increases by the P. R. R., the N. C. Ry., the P. B. & W. R. R., and the W. J. & S. S. R. R., of rates on carload shipments from connection between the N. C. Ry. and W. M. R. R. in Baltimore, Md., to and from certain points on the "block route" in said city. On shipments delivered at stations 8016 and 8018 on the "block route," and to industries on the Thames St. extension a per-car switching charge is made by the N. C. Ry. and absorbed by the W. M. R. R. on traffic coming from points on its lines; and on traffic from points in question to W. M. R. R. points a similar charge is made, resulting in shippers and receivers at all points on the block route being accorded the flat Baltimore rates. The elimination by defendants of the points referred to will result in increases over the flat Baltimore rates of $7.50 to $21.50 per car on out-bound traffic and $16.50 to $26.50 on in-bound traffic, which the W. M. Ry. would not absorb. The Block Route, owned by the N. C. Ry., is about 2 miles long, and owing to its sharp curves cars are handled over it by horses, a car generally requiring 8 horses. Sixteen large industries adjoining the route would be affected by the increases in charges. The W. M. R. R. has recently been extended to a connection with the P. & L. E. R. R., with which through routes and joint rates have been arranged under which traffic from the west which could as readily be hauled over the Pennsylvania lines may reach Baltimore. It also appeared that increase in traffic of the N.

C. Ry. over the block route causes congestion at the stations to which it is proposed to increase rates, and that the W. M. R. R. has a freight station in close proximity to such stations, at which shippers and receivers might secure flat Baltimore rates; but it was not shown whether this might be done without inconvenience and increased expense. HELD, that respondents have failed to justify the proposed increases, and tariffs naming increased rates required to be cancelled. Switching at Baltimore, 30 I. C. C. 581.

(r) The Penn. Ry. possessed extensive terminal facilities at New Castle, Pa., connecting its tracks with a large number of industries. It switched cars between such industries and the point of interchange with the Erie, P. P. & L. E. and B. & O. railways at $2 per car, but refused to switch for the B. R. & P. R. R., which entered the city over the tracks of the B. & O. R. R.. The Commission, in 29 I. C. C. 114, denounced the practice as discriminatory and ordered the Penn. Ry. to desist therefrom. Whereupon the Penn. R. R. sought an interlocutory injunction. HELD, that since the relief sought by the B. R. & P. Ry. did not involve the use of the tracks or terminal facilities of the Penn. R. R., but merely a service of transportation in receiving and forwarding freight tendered by it to the Penn. R. R., for a reasonable compensation, the case did not fall within the spirit of that portion of section 3 providing that no common carrier shall be required to give the use of its tracks or terminal facilities to another carrier engaged in line business. Penn. Co. v. United States, 214 Fed. 445.

(s) In determining a proper switching charge for switching to industries on a terminal, a deduction should be made from the total value of the terminal facilities to cover those portions of the terminal which are not involved in the service of industries, and also the trackage used in passenger business. Switching at Galesburg, Ill., 31 I. C. C. 294, 300.

(t) Complainant attacked the charge of 4c per 100 lbs., or from $7.43 to $9.03 per car, for switching cars loaded with flour from its spur track on defendant's line at Charlestown, W. Va., to the tracks of the N. & W. Ry., about 5/6 of a mile, to be shipped via the latter to southern points reached by connections of the defendant, as unreasonable and prejudicial. On noncompetitive traffic the switching charge was $3. The route via defendant and connections was unduly circuitous, though the same line rates were charged as via the N. & W. Ry. HELD, following Merchants' & Manufacturers' Association v. Penn. R. R. Co., 23 I. C. C. 474, that the charge attacked was unreasonable, and that a reasonable charge for the future should not exceed 2c per 100 lbs., minimum $3 per car. Jefferson Milling Co. v. B. & O. R. R. Co., 31 I. C. C. 547.

(u) The mere fact that unreasonable switching charges are in effect at points in the same general territory, is no justification for unreasonable rates at a certain point. Jefferson Milling Co. v. B. & O. R. R. Co., 31 I. C. C. 547, 548.

(v) In the rate for a switching movement at a terminal, distance is not always the foremost factor to be considered; there is also the element of value. B. A. & A. R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 585.

(w) An increase in a switching rate is not necessarily to be accomplished by an increase in the through rate. B. A. & A. R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 585.

(x) Complainant sought an increase in the switching rate on carload freight moved between industries and teamtracks located on its rails in Arcade, N. Y., and a connection with the B. & S. Ry. in the same village. In, Switching at Arcade, N. Y., 30 I. C. C. 501, the Commission had refused to authorize cancellation of the existing charge of $3 per car. The arrangement was instituted at a time when the two carriers were under a common control, which had ceased, complainant becoming a competing line. At Buffalo switching charges varied from $3.50 to $6.00 per car, except on coal and coke, which were assessed on a per ton basis, varying from 15c to 35c. At Wellsville, N. Y., the B. & S. Ry. switched for the Erie R. R., charging $3.00 on non-competitive and $5.00 on competitive traffic, and 30c per ton on coal and coke. Under the $3.00 charge, the rate of $1.10 on coal shipped from Sagamore, Pa., 7½c to the B. A. & A. R. R. and $1.02½ to the B. & S. Ry. The rate on coal transported from the same locality via the Penn R. R. was divided, $1.00 to the B. & S. R. R. and 25c to the B. A. & A. Ry. HELD, that complainant had demonstrated the right to a higher switching charge. A

charge of $5.00 per car prescribed, except as to coal and coke, as to which the charge should be 15c per ton, minimum $5.00 per car. B. A. & A. R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583.

(y) There must necessarily be switching every time a car is moved into or out of a plant. The charge for such service must be made with respect to some fixed unit. It is doubtless true that the cost of moving two cars at one time is less than the cost of handling them separately, but it would be wholly impracticable to fix a sliding scale of switching charges based on the number of cars handled in each switch movement. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 692.

(z) Complainants attacked the rate of 3c per 100 lbs. on shingles and lumber from Ballard, Wash., over the terminal tracks of the G. N. Ry. to Seattle, Wash., a distance of 8 miles, for interchange at the latter point with competitive lines, as unreasonable and unduly discriminatory. Complainant's mills are located on Sobey Spur, a track about 1,800 feet long, connecting with the G. N. Ry. tracks at Ballard, and complainants are chiefly interested in securing rates to be used for traffic destined to competitive points on the C. M. & St. P. Ry., that is, points served by both the G. N. Ry. and the C. M. & St. P. Ry. The latter connects with the G. N. Ry. at Seattle, but at Ballard the G. N. Ry. connects only with the N. P. Ry. The C. M. & St. P. Ry, however, serves a number of Ballard mills by means of car barges from Seattle, and formerly reached complainant's mills by car barges, a slip, and tracks to the Sobey Spur, the G. N. Ry. performing switching on the spur at $3 per car. Harbor improvement works compelled the abandonment of the slip, after which traffic for the C. M. & St. P Ry. was transported by the G. N. Ry. to Seattle at $4.50 per car; but this charge being intended only for movement from industries on the G. N. Ry. terminal at Ballard to industries on the terminal of the same line at Seattle, was cancelled, and the present rate imposed. The harbor improvements mentioned also necessitated extensive relocation on the part of the G. N. Ry., involving an expenditure of $1,962,000 and increasing the distance from Ballard to Seattle from 6 to 8 or 9 miles. It was the custom of the C. M. & St. P. Ry. to absorb the $4.50 charge of the G. N. Ry. and a $3 charge of the C. & P. S. R. R. for interchange between the G. N. Ry. and the C. M. & St. P. Ry. at Seattle, on traffic destined to competitive points, but not on traffic to non-competitive points on its own line. At present, when the haul beyond Seattle is given to the G. N. Ry. it applies the flat Seattle rate, and complainant may also ship via the N. P. Ry. as a result of the switching arrangement with the G. N. Ry. at Ballard, but as a result of the present rates complainant is shut off from the extensive reconsignment privileges accorded by the C. M. & St. P. Ry at Aberdeen, S. Dak. The contested rate of 3c under an average loading of 35,000 lbs., results in a rate of $10.50 per car for a loaded and empty haul of 16 miles. The C. M. & St. P. Ry. charges $10 per car on car-barge service between Ballard and Seattle and the same amount for a similar sorvice at Tacoma, distance 6 miles. And the N. P. Ry. charges of 2c per 100 lbs., minimum $6 and maximum $10 per car, for similar service between South Tacoma and Tacoma, 4½ miles, were approved by the Commission, in, Public Service Commission of Washington v. N. P. Ry. Co., 23 I. C. C. 256. Defendant offers to enter into joint rates with the C. M. & St. P. Ry. on the basis of the flat Seattle rate for traffic destined to non-competitive local points on the latter line. HELD, that defendant's commodity rate of 3c on shingles and lumber from Ballard to Seattle for interchange with other roads, is not unreasonable in so far as it results in charges not greater than $10.50 per car. The arrangement for joint rates on the flat Seattle basis, from complainant's mills to non-competitive local points on the C. M. & St. P. Ry. is proper and should be adopted. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683.

(aa) All of the southern roads make a charge of $2 from industries on their own rails. No charge is made from the interchange with connections and all connecting-line switching in excess of $2 per car is absorbed. This has the effect of placing all users of this service upon a parity. Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 555.

(bb) On yellow pine lumber from points in Louisiana, Arkansas and Texas to Ralston, Neb., trains are stopped at Gibson, within switching limits of Omaha, there broken up and cars switched thence to Ralston, to which there is a differential of 1½c over Omaha. Not found un-

reasonable. Cady Lumber Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-590.

(cc) Higher rates on lumber from Alcolu, S. C., to Chape Hill, N. C., than to Winston-Salem and Greensboro, N. C., not found unreasonable owing to extra expense of switching cars from main line. Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548.

(dd) A carrier refused to switch, at any charge, carload shipments from or to its spur track located in a certain street, when to or from connecting lines, for an industry located on the south side of the street, meantime performing the same services for industries on the north side of the street, for the reason that the handling of such freight on the south side involved a dray haul of 30 feet in addition to the handling over the sidewalk, and on the theory that the service to industries on the north side was an industrial track service, while to that on the south side it was a team track service, and further that the carrier could not be compelled to furnish its terminal facilities (team track) for the use of its competitors. HELD, that this was an unlawful discrimination against the industry located on the south side of the street. U. S. Button Co. v. C. R. I. & P. Ry. Co., 32 I. C. C. 149, 151.

(ee) Complaint attacked the refusal of the carrier to switch shipment for it, while performing the same for its competitors just across the street. Complainant's plant is located on the north side of and adjoining the sidewalk of Third street at Muscatine, Ia. Immediately south of and abutting on the south side of the street are located the plants of other manufacturers, among them one of its competitors. The carrier owns and operates a spur track in Third street, ten feet from the south side thereof, over which it switches carload freight without charge between its own line and industries located on both sides of the street. It also switches carload freight between its connections and the industries on the south side of the street, for which service it collects a fixed tariff charge, but refuses to perform a like service between its connections and complainant's plant at the same or any other charge. Defendant contends that the switching done between its own line and plainant's industry is nothing more than a team track service and is thus distinguished from the service named in its tariff, which provides for switching between an industry on the one hand and a connecting line on the other. No material difference existed in the character of the switching service, whether performed for complainant's industry or for those on the south side of the street. The spur track is located close to the sidewalk on the south side of the street and is about 30 feet from the sidewalk on the north side. Carting or draying for the space of 30 feet and handling over the sidewalk are necessary with respect to complainant's industry, whereas, loading and unloading on the south side of the street is generally accomplished by handling across the sidewalk or over platforms. In some cases on the south side carting or draying is necessary to reach places of storage and in such cases the switching service is not granted under the carrier's practices. The carrier issued instructions to its agents not to accept cars from foreign lines for placing on the spur track in Third street when consigned to industries which required teams for unloading, this apparently being done to put a stop to the practice of other lines of using defendant's facilities intended for team track use only; but the effect was to stop the placing of cars for complainant, and this for no reason other than its plant is located about 30 feet further from the tracks than industries still served. HELD, the refusal of the carrier to provide for complainant the same switching service that it provides for industries on the south side of the street amounts to an unlawful discrimination against complainant, and subjects complainant to undue and unreasonable prejudice, compared with such other industries; that so long as defendant continues to place cars upon the spur track in Third street to be loaded or unloaded for the benefit of industries located on the south side of the street, it should accord the same switching service to complainant's industry. U. S. Button Co. v. C. R. I. & P. Ry. Co., 32 I. C. C. 149.

(ff) A readjustment of rates not only within the switching limits, but also to and from nearby points outside such limits, is warranted by an order of the state commission prescribing new rates within switching limits. Baltimore Switching Charges, 32 I. C. C. 376, 379.

(gg) The Commission considered proposed rates for switching interstate traffic between points on lines of the B. & O. R. R. in Baltimore, Md., and between those points and adjacent territory.

Respondents proposed charges of $1.00 per car for "yard" switching and $5.00 for "industrial" switching within Baltimore switching limits, maximum haul 20 miles, and $5.00 for switching to and from points outside the limits 8 miles or less; to bring interstate charges in line with those prescribed for intrastate traffic by the state Commission. While the proposed charges would result in some increases in rates, reductions were more frequent. HELD, that a readjustment of rates not only within the switching limits, but also to and from points without, was warranted by the order of the State Commission and that the proposed rates were justified. Order of suspension vacated. Baltimore Switching Charges, 32 I. C. C. 376.

(hh) In 23 I. C. C. 474, the Commission held that charges for interchange of interstate traffic at Baltimore, Md., should not exceed the flat Baltimore rate by more than 5c on the first and second classes nor by more than 2c on classes three to six and commodities not moving under commodity rates. On rehearing, it appeared that subsequent to such holding the state commission had extended the switching limits of Baltimore, increasing the maximum haul for 15 to 20 miles, and had placed switching charges on a per car basis, $1.00 per car for yard switching and $5.00 for industrial and interchange switching. Rates to East Baltimore industries served by the Canton R. R. had been placed on this basis, but the Canton R. R. was a terminal railroad only. HELD, that the charge for interline switching movements in Baltimore, in connection with interstate traffic, should in no case exceed the flat Baltimore rate by more than 2c per 100 lbs. Merchants' & Manufacturers' Asso. v. P. R. R. Co., 32 I. C. C. 434.

(ii) As a general rule there would be additional expense for switching in connection with two-line haul from Kanawha district to Richmond as against the one-line haul. Hughes Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10, 13, 14.

(jj) In rate for switching movement at terminal, distance is not always foremost factor to be considered. Buffalo, Attica & Arcade R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 585.

(kk) Cost occasioned by switching from one line to another where spread over only a few miles may justify a rate somewhat higher than via a single line. Weatherford Chamber of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 666.

(ll) Contention that it was unreasonable to charge a higher rate on scrap iron from Indiana Harbor, Ind., to Chicago and Maywood, Ill. than from industries having private aidings at Indiana Harbor, sustained. Reparation awarded. Price Iron & Steel Co. v. I. H. B. R. R. Co., Unrep. Op. A-731.

(mm) Unlawful discrimination not to provide for complainant same switching service as for industries on south side of street. United States Button Co. v. C. R. I. & P. Ry. Co., 32 I. C. C. 149.

(nn) Universal switching system with uniform rate prescribed for carriers with tracks reaching any wharves and docks. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 279.

(oo) Charge of $5 per car on tile, hollow brick, etc., from Wilson to Kerper, Ohio, not found unreasonable. Proportional Commodity Rates Between Kerper and Wilson, Ohio, Unrep. Op. A-893.

§6. Reciprocal Switching.

(a) The ideal condition in a great city would be where all lines reciprocally absorbed switching charges, so that the rate carried with it a delivery to any point within the city limits. But it is always difficult to draw the line which bounds the district within which switching charges shall be absorbed. The industry or locality located without this district feels itself discriminated against when compelled to pay an additional charge. And the expense of making deliveries in a great city is very considerable. While the reciprocal absorption of switching charges may, and usually does, substantially offset itself between different carriers so that the actual money payment from one to the other is small, still the cost of the service must be borne by someone. Where the rate which the shipper pays to his industry is fixed without any reference to the terminal cost, it is evident that he may receive an unfair advantage as compared with the industry located at some point where the expense of the terminal delivery is very much less. Thus industries located at great terminals like Detroit or Chicago may receive a greater service in proportion to what they pay than do their competitors located at country points. The tendency of this is to concentrate business, whereas it might be better on many accounts if it could be more gen-

erally diffused. Detroit Switching Charges, 28 I. C. C. 494, 496.

(b) The defence of reciprocal advantage should be supported by definite figures showing, as far as possible, the precise effect of the alleged reciprocal arrangement; that is, just what amount of switching or terminal service is furnished by each road to the others concerned. Switching at Galesburg, Ill., 31 I. C. C. 294, 299.

(c) The so-called reciprocal theory of establishing switching charges would seem to be open to serious objection because of its indefiniteness and its tendency to lack of uniformity, as compared with the other theory that the charges for any given switching or terminal service should be established to secure a proper return for the service, considered by itself. Switching at Galesburg, Ill., 31 I. C. C. 294, 299.

(d) The Commission considered the proposed cancellation of a switching rate of $2.00 per car on interchange traffic between the tracks of the R. I. S. R. R. system and industries on the terminals of the C. B. & Q. R. R. at Galesburg, Ill. The former road built into the territory served by the C. B. & Q. R. R. and paralleled the latter between its termini, Galesburg and Rock Island. At Galesburg the C. B. & Q. R. R. had 125 miles of sidetracks and over 8 miles of industrial tracks, on which were located 70 industries, as compared with three industries on the tracks of the R. I. S. R. R. The C. B. & Q. R. R. had a reciprocal switching arrangement with the A. T. & S. F. Ry., which had 21 industries on its tracks at Galesburg, but did not desire to switch for the R. I. S. R. R. at any price. HELD, that the C. B. & Q. R. R., in refusing to switch for the R. I. S. R. R., as it did for the A. T. & S. F. R. R., unjustly discriminated against the R. I. S. R. R. The so-called reciprocal charge of $2.00 was not, however, necessarily a just charge for the service demanded. Directed that the C. B. & Q. R. R. remove the discrimination either by terminating its arrangement with the A. T. & S. F. Ry., or by cancelling the suspended tariff. Switching at Galesburg, Ill., 31 I. C. C. 294.

(e) Mutual scheme for effecting switching deliveries within the Chicago district is based upon a schedule of reciprocal charges under which the terminal carriers switch for one another at substantially uniform rates or charges which are fixed regardless of the extent or cost of the service performed. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 73.

(f) In the absence of the condition of reciprocity the attempt to make terminal rates. of course, is to make the charge an adequate one for the service furnished. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 692.

(g) The reciprocal interchange arrangement in the Chicago switching district is highly commendable in many respects. It is advantageous to the public and carriers alike. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 81.

(h) The Commission considered the proposal of the C. M. & St. P. Ry. to increase switching charges at Milwaukee, Wis., from $2.00, $2.50 and $3.00 per car, dependent on distance, to 1c per 100 lbs., minimum 60,000 lbs., for reciprocal switching; and from $5.00 and $6.00 to 1½c per 100 lbs. minimum 60,000 lbs. for movements between industries. The C. M. & St. P. Ry. and the C. & N. W. Ry. controlled the tracks leading to industries in and adjacent to Milwaukee, and did the necessary switching for all other lines. The average distance cars were switched to and from connections with the former was 7 miles. For the "in" movement of loaded cars it appeared that $6.11 per car was necessary to cover operating expenses, taxes, and return on investment; for the "out" movement, $5.96. For revenue cars only these figures were $6.31 and $6.16, respectively. HELD, that respondent had justified the proposed increases. Orders of suspension vacated. Switching Charges at Milwaukee, Wis., 32 I. C. C. 509.

(i) The Commission cannot decline to pass upon the reasonableness of proposed reciprocal switching charges, merely because it appears that such charges are absorbed under existing tariffs and that protestants, not being carriers, have, therefore, no interest therein. Switching Charges at Milwaukee, Wis., 32 I. C. C. 509, 511.

(j) Reciprocal switching arrangements under which all carload freight, both competitive and noncompetitive, is switched between all lines at uniform switching charges, place all the railroads entering a city in competition for the business of every shipper, and thus

afford the best possible service to the public. Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C. 168, 201.

§7. Right to Connection.

See Act to Regulate Commerce, II (f); Common Carrier, §8 (d); Electric Lines, VIII; Loss and Damage, §2 (n); Tariffs, §7 (p).

(a) The rights and duties of carriers in the apportionment of car supply must be determined by the Interstate Commerce Act, and not by any contract they may choose to make. That portion of section 1 which makes it the duty of every carrier to provide transportation, including cars, upon reasonable request, must be read in connection with that portion which deals with switch connections between common carriers and lateral branch lines. A lateral branch line is entitled to a switch connection without regard to its status as a plant facility or common carrier. The act provides that a lateral branch line shall be entitled to a switch connection with a common carrier which is itself a lateral branch line of some other common carrier. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505.

(b) A trunk line carrier must accept interstate cars from a connecting carrier destined to points on its terminals, even though tendered to it at the terminal, under reasonable switching charges in proportion to the service. Iowa & Southwestern Ry. Co. v. C. B. & Q. Ry. Co., 32 I. C. C. 173, 175.

(c) Defendant required to receive cars for switching to industries located on its tracks, and to establish a reasonable charge therefor. Iowa & Southwestern Ry. Co. v. C. B. & Q. R. R. Co. 32 I. C. C. 172.

§9. Reparation.

(a) Subsequent to movement tariff filed providing for absorption of switching charges. This is the same as a voluntary reduction in rates and no award of reparation can be made on these facts alone. Laclede-Christy Clay Products Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A105.

(b) On shipment of cattle from West Toronto, Ont., to Philadelphia, Pa., and Baltimore, Md., for export, carriers failed to provide for absorption of switching charges from Black Rock to East Buffalo. This was corrected. Reparation to be awarded on proof. Swift Beef Co., Ltd., v. C. P. Ry. Co., Unrep. Op. A284.

(c) Carrier filed tariff canceling provision for the absorption of switching charges of connecting and intermediate lines on grain. Provision subsequently restored. Reparation awarded on shipment moving during the interim. Cavers Elevator Co. v. M. P. Ry. Co., Unrep. Op. A349.

§10. Tariffs and Publication.

(a) A tariff of a carrier which specifically provides that a switching charge shall cover the movement of the car loaded one way and empty the other between industries on its line and its junction with connecting lines' tracks, clearly indicates that the charge does not contemplate the furnishing of equipment. Wabash Sand & Gravel Co. v. V. R. R. Co., 31 I. C. C. 344, 346.

IV. PROCEDURE AND PLEADING.

§12. In General.

(a) In a proceeding to determine the reasonableness of switching charges, it is immaterial that proceedings were instituted solely from complainant's desire to recover charges which have accrued through an intermediate carrier's failure to observe consignee's instructions as to delivery. Bottsford & Barrett v. P. R. R. Co., 29 I. C. C. 469, 671.

(b) A general finding by the Commission with respect to switching rates in a certain city, is no justification for proposed increased rates in a particular case, which increased rates the law requires the respondent to show are just and reasonable. Switching at Baltimore, 30 I. C. C. 581, 584.

TAILBOARD DELIVERY

See Facilities and Privileges, §14¾

TANK CARS

See Cars and Car Supply, §10.

TAP LINES.

I. CONTROL AND REGULATION.

§1. Definition of tap line.

§2. Jurisdiction of Commission.

§3. Test of status.
(1) In general.
(2) Effect of incorporation.
§4. When plant facility.
§5. Scope of tap-line investigation.
II. POWERS AND DUTIES.
§6. As common carriers.
§7. Legality of divisions, allowances or practices.
§8. Passes to officers.
§9. Right to allowances.
III. THROUGH ROUTES AND JOINT RATES.
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IV. TARIFFS AND PUBLICATION.
§11. In general.
§12. Reparation.
V. PROCEDURE AND PLEADING.
§13. In general.

CROSS REFERENCES

See Allowances, §9 (h), (i); Commodities Clause, II (k); Common Carriers; Divisions, V (d); Facilities and Privileges, §1 (a); Passenger Fares and Facilities, §12 (h); Special Rates and Services, (a).

I. CONTROL AND REGULATION.

§2. Jurisdiction of Commission.

See Commerce Court, §2 (a).

(a) Common ownership or control of a lumber mill and a railroad cannot be prohibited by the Commission, or be made the basis of a denial to a railroad of rights accorded another railroad not so owned. L. & P. Ry. Co. v. United States, 209 Fed. 244; sustained, 34 Sup. Ct. 748, 234 U. S.; 58 L. ed.

(b) The Commission possesses jurisdiction to put an end to abuses arising from free services and allowances accorded industrial plants by line carriers. Industrial Railways Case, 29 I. C. C., 212, 243.

(c) In the original report herein, 23 I. C. C. 277, 549, the Commission, in passing on the right of lumber tap lines to participate in through routes and joint rates held that 57 of such lines were not so entitled. Five lines having appealed, the Supreme Court in The Tap Line Cases, 234 U. S. 1, held that they were engaged in a service of transportation and that the Commission had exceeded its authority in condemning the divisions previously allowed to them. Since this ruling extended in principle to all of the 57 tap lines, the Commission felt bound to apply the ruling to the entire group. HELD, that the original orders of the Commission, so far as they related to through routes, joint rates and divisions, be vacated and set aside, and divisions and allowances fixed as of May 1, 1912. The conclusions announced in the original report respecting milling-in-transit rates on logs adhered to. Restoration of such privileges denied. The Tap Line Case, 31 I. C. C. 490.

(d) Because the conclusion is reached that a tap line railroad is a common carrier and therefore entitled to participate in joint rates, it does not follow that divisions of joint rates may be made with it at the will of the carriers and without the power of the Commission to control the same. Industrial Railways Case, 32 I. C. C. 129, 131.

§3. Test of Status.

(1) In General.

See Common Carrier, §1.

(a) Because most of the traffic handled by an industrial or tap-line road is its own property and only a small part of the traffic handled is the property of others, it does not necessarily follow that the road is not a common carrier. The extent to which a road is used does not determine whether it is or is not a common carrier. It is the right of the public to use the road's facilities and to demand service of it, rather than the extent of its business, which is the real criterion determinative of its character. Industrial Railways Case, 32 I. C. C. 129, 130.

(b) In deciding whether industrial railways may enter into joint rate arrangements with trunk lines, it must be determined with respect to each of the lines, first, whether the instrumentality performing the service is a bona fide common carrier; second, whether the service which it performs between the point of interchange with the trunk line and point of placement on the line of the industrial road is plant service or public transportation; third, whether a charge should be made for such service

in addition to the line-haul rate applicable to or from. In determining these questions there is to be considered the large economic problem whether part of the money paid to the trunk line carriers for public transportation service is to be used to defray the expense of particular shippers in conveying their traffic to and from the terminals of the trunk line carriers. Second Industrial Railways Case, 34 I. C. C. 596, 600.

(2) Effect of Incorporation.

See Common Carrier, §1.

(a) The terminal railroad, serving a certain industry, and its stock owned by the persons who own the stock of this industry, is treated the same as any terminal common carrier not serving such a mutually owned industry, except with respect to a closer examination and regulation of the allowances and divisions which it receives. Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104

§4. When Plant Facility.

See Additional Charges, (c); Allowances, §12, §12 (2); Transportation, I.

(a) The modern steel plant covers a larger area and every provision must be made to reduce manufacturing cost and provide against loss of efficiency. The most important facility in accomplishing this is the plant railway, by which, in addition to the inbound movement of ore, coke, and limestone, is secured the prompt distribution of material and supplies to the various departments, and the quick removal of slag, ashes, and other waste materials. All this is a part of the manufacturing process; no more related to transportation than it would be if done with horse and wagon. Industrial Railways Case, 29 I. C. C. 212, 224.

(b) Facilities used by an industry in performing service beyond a reasonable interchange point with the line carrier, whether incorporated or not, are plant facilities and plant equipment. Industrial Railways Case, 29 I. C. C. 212, 237.

(c) The Ball Bros. Glass Mfg. Co. has a glass manufacturing plant at Industry, 1 mile south of Muncie, Ind., which was formerly connected with the L. E. & W. and the C. C. C. & St. L. at Muncie by the Fort Wayne Belt and the Muncie Belt, subsidiaries of those lines. About 1902 the glass company caused the M. & W. R. R. Co. to be incorporated, and a track to be constructed connecting the plant with all its trunk lines serving Muncie. The M. & W. R. R. has but 2.78 miles of track, only 1 mile of which is outside its plant. On the rails is a small pottery factory also reached by the Fort Wayne Belt. It owns no equipment, switching operations being performed under an arrangement by which the Muncie Belt furnishes both material and labor, being reimbursed for actual cost of operating and maintenance, amounting on the number of cars handled to about 75c per car. The M. & W. R. R. received allowances from the connecting carriers of $2.50 on in-bound and $3.50 on outbound shipments. It has no outstanding bonds, and its capital stock of $50,000 is owned by the stockholders of the glass company, each of whose stockholders is a stockholder of the M. & W. R. R. Co. In 1912 the total revenue derived from switching operations (really performed by the Muncie Belt at cost) was $23,626; expense, $11,357; net operating revenue, $12,268. The plant railway represents a total investment of but $28,000. HELD, that the M. & W. R. R. is purely a private facility of the Ball Bros. Glass Mfg. Co. and there is no justification for allowance to it by connecting trunk lines of a switching charge. In re Muncie & Western R. R. Co., 30 I. C. C. 434.

(d) The Essex Terminal Railway Company objected to the removal of that company as a participating carrier in tariffs and supplements applicable to international traffic. The removal was made on account of a decision of the Interstate Commerce Commission in the Industrial Railways' case, 29 I. C. C. 212. The Canadian Board stated that in that case the issue presented for determination by the Commission was the legality of the allowances paid by public carriers, east of the Mississippi River, to industries on their rails that own and operate plant railways in connection with their industrial establishments. The judgment, with much clearness, establishes on the one hand the fact that, under the guise of a transportation service, these plant railways in effect have been performing a work which should legitimately be borne as part of the expense and operation of the plant facility—a work legitimately a manufacturing expense—purely a shipper's service, and not a transportation service the cost of which

fairly can be included in the railway rate. It is also clearly shown that these services, which consisted (inter alia) in moving material from one point to another point in the same industrial plant, spotting and sorting cars all in the interest of the plant and not in aid of the transportation movement, result, on the one hand, in great expense to the line carrier, and on the other hand, to a great advantage to the industrial plant; that such benefits were not conceded by the regular railways on any question of principle, but differed in degree in the case of the different industries which were fortunate enough to obtain them; so that in some instances the whole yard or industrial cost was absorbed by the railway rate, while in some instances only part; that in some instances all the work was performed by the railway company, while in other instances the work being done, as it properly should be done, by the manufacturing plant through its own railway, was nevertheless paid for by allowances made by the line carrier either in whole or in part. Specified industrial railways are considered in the judgment, and all of those considered were found to be railways constructed simply and purely for the purpose of the industry owning or controlling them, and not for the purpose of performing a transportation service as a public carrier. The Canadian Board then stated the declaration of principle laid down by the Interstate Commerce Commission appears to be just and sound. The fact of any railway of the character described obtaining any portion of a through rate simply means that the industry obtains upon all its shipments carried under the rate a rebate to the amount that the industrial line participates. The practice is illegal and discriminatory. (Can. Ry. Comm., 1914.) The Essex Terminal Railway, File No. 24129.

(e) If the service in any instance is a plant service the trunk line carriers can not lawfully compensate the shipper itself, or indirectly through its incorporated plant railroad, for the use of its plant tracks or for the shipper's cars over them with its own motive power. Second Industrial Railways Case, 34 I. C. C. 596, 601.

(f) Railway lines which own no cars maintain no stations other than loading and unloading docks within an industrial plant, and whose tracks lie wholly on the land of the industry which they serve, are not common carriers. The public cannot avail itself of such a line, and the holding out is not genuine. Second Industrial Railways Case, 34 I. C. C. 596, 601.

II. POWERS AND DUTIES.

§6. As Common Carriers.

See Common Carriers

(a) Inasmuch as the Commission is without authority to re-establish through routes and joint rates except as between interstate carriers, where the Commission directs the re-establishment of through routes and joint rates between lumber mill tap lines, it impliedly holds such tap lines to be interstate common carriers. L. & P. Ry. Co. v. United States, 209 Fed. 244, 249; affirmed, 234 U. S. 1, 34 Sup. Ct. 741; 58 L. ed.

(b) The Commission investigated proposed tariffs by the Atlanta, Birmingham & Atlantic R. R. naming new joint class and commodity rates between points on the Birmingham Southern R. R. (controlled by the Tenn. Coal & Iron R. R. Co.), and points on its lines and connection. Connecting carriers protested because the Birm. So. Ry. is owned and controlled by the T. C. I. & R. R. Co. No increase was effected by the proposed rates and their reasonableness was not questioned. The Birmingham-Bessemer district owes its development to its mineral resources. Bessemer is about 11 miles southwest of Birmingham. The T. C. I. & R. R. Co. and other industries have their plants in the district, including the Republic Iron & Steel Co. at Thomas, the Sloss-Sheffield Co. at Birmingham and North Birmingham, the Woodward Iron Co. at Collins and the Ala. Cons. Coal & Iron Co. near Boyles. The Birmingham Southern main line runs northwestwardly from Birmingham to Pratt City, thence southwestwardly through Ensley, Corey and Collins to A. B. & A. R. R. Junction, a distance of about 16 miles. From the last-named point it has trackage rights over the A. B. & A. R. R. to West Bessemer Junction and it runs from there to West Bessemer and other points. In addition to the main line the Birmingham Southern has extensions to various mines of the Tenn. Co. The A. B. & A. R. R. touches the Birmingham Southern at Bessemer, Birmingham and A. B. & A. Jct. only. The L. & N., A. G. S. and A. B. & A. R. R.s

have direct lines connecting Birmingham and Bessemer; and the L. & N., Southern and St. L. & S. F. R. R. have lines paralleling the Birmingham Southern between Ensley and A. B. & A. Jct. Other trunk lines serving the district have trackage rights over the lines named. For long hauls the trunk lines apply the Birmingham district rate to or from competitive points and this rate also applies to certain coal mines within a more extended radius At Birmingham, Ensley and Bessemer the trunk lines absorb the switching charges of each other to all industries. At the same points they absorb the switching charges of the Birmingham Southern for deliveries to or from all shippers not affiliated with the Tenn. Co. The absorption of the latter charges was not voluntarily accepted by the trunk lines but was in compliance with an order of the Alabama State R. R. Commission issued in 1908. (In this report the Alabama Commission regarded the Birmingham Southern strictly as a common carrier, regardless of its ownership by the Tenn. Co.) The trunk lines obeyed this order on competitive business other than that destined to plants of the Tenn. Co. and this absorption had been extended to interstate traffic to avoid discrimination. On traffic to and from points on the Birmingham Southern outside of these switching limits the charges were the group rates plus the individual rates of the Birmingham Southern. On traffic to or from the plants of the Tenn. Co. no absorption was made of the Birmingham Southern's charges at any point. This was the practice of all the carriers, with the exception that the A. B. & A. R. R. on intrastate business obeyed the laws of Alabama in constructing through rates by deducting ten per cent from the sums of the locals. The tariffs objected to proposed the following changes: (1) The Birmingham Southern would be allowed divisions out of joint through rates; (2) on traffic switched to or from the plants of the Tenn. Co. at Birmingham and Bessemer, the Birmingham Southern would be allowed a switching charge of $2; (3) coal, steel and other products of the Tenn. Co. produced along the lines of the Birmingham Southern at points other than Birmingham and Bessemer would move on joint rates, in which the Birmingham Southern would participate from points of origin to destination; (4) shippers independent of the Tenn. Co. located on the lines of the Birmingham Southern at points outside of the switching limits of Birmingham, Bessemer or Ensley would be provided with joint rates lower than rates formerly in effect and not higher than the Birmingham rates. The Birmingham Southern operates a little more than 43 miles of main line track and owns and operates something more than 85 miles of yard tracks and sidings, the most of which are within and about the plants of the Tenn. Co. The tonnage of the Tenn. Co. is about 40 per cent of all the traffic originating in the Birmingham district and about 93 per cent of that handled by the Birmingham Southern. The Birmingham Southern has 33 box cars, 147 flat cars, 479 coal cars and 271 other cars. It has 42 locomotives, 6 passenger cars and employs 591 men. It has freight stations at Birmingham, Pratt City, etc. It has no passenger business. In its report to the Commission it describes itself as a switching or terminal railroad doing in addition a freight service for the public. It has track connections with nine trunk lines at Birmingham, six at Ensley, seven at Bessemer and one at Stockton. It has ten strictly local stations. There are thirty-four independent industries on the road, eight of which are served by team tracks and seventeen by industry tracks. The tracks from which the Birmingham Southern has grown were constructed originally to serve the industries owning them, but a number of industries independent of the Tenn. Co. look to the Birmingham Southern for transportation facilities. The legal identity of the Birmingham Southern has been preserved intact from its incorporation in 1899 until the present time, although the character and extent of the system has changed from time to time, at one time the stock being owned and the property operated jointly by the L. & N. and Southern Rys. The Birmingham Southern publishes tariffs and files them with the Alabama Commission and with the Interstate Commission. For services rendered to the Tenn. Co. it charges its tariff rates on all road or switching movements, while for intraplant work it charges cost. The major portion of the million and a half tons of ore used yearly by the Tenn. Co. is transported by the L. & N. R. R. The Birmingham Southern hauls no ore from the mines to the

furnaces. The rate for the transportation of coal within the Birmingham district is generally 30c per ton, and this is the basis of divisions between trunk-line carriers when coal originating on the line of one carrier is shipped under a joint rate to a destination on the line of another carrier, the exchange being made at Birmingham. The rate charged the Tenn Co. and other furnace industries in the district, however, was 12.5c. During the seven years that the trunk lines operated the Birmingham Southern R. R. they used its rails chiefly for terminal switching. In the absence of joint through rates it has been to the interest of all industries located on it to avoid main line hauls over it as far as possible. The Birmingham Southern has comparatively little traffic moving between its plants at Birmingham, Bessemer and Ensley. Various extensions were contemplated. The Birmingham-Bessemer district has a large number of industrial roads in operation, some bringing material to the plants and some confined to intraplant work. None of these railroads was allowed any division out of joint through rates; no switching charge or other compensation was given them on business destined to or originated by the owning industry; and no road other than the Birmingham Southern owned by an industry in the district was allowed any switching or other charge on business handled for the public. No allowance of any kind has ever been made to any of these industrial roads, except the Birmingham Southern, which receives the switching allowance mentioned under order of the Alabama Commission and concessions made by certain lines on interstate business. But the Birmingham Southern was the only one of these industrial roads that had been incorporated as a common carrier; it was the only one that made reports and filed its tariffs with the Commission; and it was the only one which held itself out to the public as a common carrier. It was the most extensive and best equipped among them, and it can and does serve the public. The suspended rates apply only from or to certain stations on the Birmingham Southern, and no divisions would accrue to it on shipments from any other points. Shipments to or from industries within the switching limits of Birmingham or Bessemer would move under the group rate and the Birmingham Southern would receive only its $2 per car. Carload reight would be exchanged between the A. B. & A. and Birmingham Southern at Bessemer and L. C. L. freight at Birmingham. On L. C. L. quantities the divisions on class rates accruing to the Birmingham Southern would range from 10c on first class to 3c on Class C. The divisions on C. L. freight not specifically provided for would be 30c per ton. The divisions on brick, building material, etc., would be 20c per ton. The divisions on coal, coke, billets and the like would be 20c per ton. When for export, the divisions on billets, wire, etc., would be 15c per ton. The highest divisions accruing on commodity rates would be $1 per ton on explosives, n. o. s., C. L.; the same on meat in sacks or boxes, L. C. L., and $1.60 per ton on meat in bulk, L. C. L. Apparently the divisions on all traffic agreed to by the two carriers under the suspended tariffs would be generally as low as those which the A. B. & A. now pays to trunk lines on traffic interchanged at Birmingham. HELD, the mere fact of ownership, generally speaking, should make no difference in the status of a common carrier as such. The record shows that the Birmingham Southern is a common carrier; that it can and does serve the public. The fact that other common carriers can serve the great majority of the industries which the Birmingham Southern serves can have little or no weight in this proceeding. Such a test is not prescribed by law and not permitted under it. A minimum division of 6.5c a ton on carload traffic may be paid by the A. B. & A. R. R. to the Birmingham Southern Ry., the division on L. C. L. traffic to be in proportion. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110.

(c) If an industrial railway is a common carrier, it is entitled to all rights and subject to all limitations provided in the Act. Industrial Railways Case, 32 I. C. C. 129, 133.

(d) Following the report in Industrial Railways Case, 29 I. C. C., 212, trunk line carriers in official classification territory withdrew from joint rate arrangements formerly maintained with certain industrial railroads; whereupon the latter complained that such action would work unjust discrimination against shippers and places located on their lines and would constitute an unreason-

able increase in the rates between points on their lines and points on the lines of other carriers. The industrial railways were grouped as follows: (1) Those of the trunk line type, having a very general traffic aside from that of the controlling industries; (2) those extending from lumber mills distinguishable from those in Tap Line Cases, 234 U. S. 1, only in that the tap lines were not located in a territory from which rates were made under a large blanket of originating points; (3) plant railways operated from plants in close proximity to line haul carriers; (4) cases where a plant connecting with a line haul carrier in close proximity later connected with another at a distance; (5) industrial lines which had taken on the form of common carriage by means of leases of facilities of the trunk lines; and (6) industrial plant tracks not dedicated to public use. HELD as to these groups, respectively: (1) that the division of joint rates was a matter of bargaining between the interested carriers; (2) principles stated in second supplemental report in Tap Line Case, 31 I. C. C. 490, should govern in fixing divisions with lines in group two; (3) if lines in group three, though in form common carriers were in effect performing only private transportation, there might be a charge in addition to the line haul rate; (4) in making rates to plants in group five, they should add to the junction point rate for the service extended to the plant from the more distant line and cancel joint arrangements with the contiguous line; (5) that the arrangements resorted to by industrial lines in group five were devices to defeat the law; and (6) that the industrial lines in this group fell within the principles laid down in General Electric Case, 14 I. C. C. 237. Second Industrial Railways Case, 34 I. C. C. 596.

§6½. Amount of Allowances.

(a) The mere quantitative relationship between the outside and company tonnage hauled by an industrial road, in the absence of divisions in the through rate, can in itself decide little as to the reasonableness of proposed divisions to be paid to the industrial road out of through rates. The real question is whether or not the proposed tariffs, by reason of these divisions, will discriminate unjustly in favor of the industry owning the road. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 121.

(b) In deciding as to the reasonableness of divisions to be paid to the industrial road out of through rates, it is not proper to consider only the "added cost of doing business," meaning that portion of the haulage expense, as distinct from the terminal expense, which fluctuates with the volume of the traffic, making no allowance for taxes, interest or operating expenses. If the industrial road is to be compensated at all for certain services, it should be compensated for all costs reasonably apportionable to such services, and not merely for the added expenses that would be saved if the service were not performed. Its position as a common carrier entitles it to this. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 121.

(c) The fact that the proposed divisions of the industrial road with the A. B. & A. R. R. are as low or lower than the divisions granted by the trunk lines to one another on the same traffic, is worthy of consideration in determining the reasonableness of such proposed divisions. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 121.

(d) In the matter of divisions of joint rates between trunk-line carriers and tap lines or industrial roads, it is not only within the power, but it is the duty of the Commission to make orders which shall nullify practices resulting in rebating or preference, whatever form they may take and in whatever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discrimination in favor of the owners of tap lines or industrial roads, because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that the tap line or industrial road shall receive just compensation only for what it actually does. Industrial Railway Case, 32 I. C. C. 129, 131.

§7. Legality of Divisions or Practices.

(a) In 23 I. C. C. 277 the Commission entered an order refusing to compel certain trunk lines operating in the southwest to establish or re-establish through routes and joint rates with, and grant allowances and divisions to certain Louisiana "tap line" railroads connecting such trunk lines with timber lands and lumber mills. In 23 I. C. C. 549 the former order was amended by an order requiring such trunk lines to abstain from

making any allowances out of the rate to the tap lines on shipments of proprietary freight, but required them to re-establish within a certain time through routes and joint rates on non-proprietary traffic. The latter order also provided that in case such trunk lines failed to re-establish the latter routes and rates, it would, on proper petition, enter an order requiring the same, or enter upon an inquiry with respect thereto. On appeal, the Commerce Court, in 209 Fed. 244, held that the Commission was without power to prohibit the making of joint rates by the trunk and tap lines, and the payment of some division of rates to the tap lines on lumber transported from proprietary mills, and annulled the order of the Commission in this respect. On appeal to the Supreme Court it was objected that the order of the Commission was not reviewable by the Commerce Court, because merely of a negative nature. HELD, that the order was affirmative in its nature and the Commerce Court had jurisdiction. United States v. L. & P. Ry. Co., 34 Sup. Ct. 741, 746; 234 U. S. 1, 58 L. ed. —.

(aa) The Commission considered the legality of allowances by public carriers, east of the Mississippi River, to industries that own and operate plant railways in connection with their industrial establishments. The allowances include: (a) divisions out of the rate; (b) per diem reclaims; (c) remission of demurrage; (d) furnace allowances. The related question of the legality of "spotting" cars in and about industrial plants without charge in addition to the rate, is also considered. During the fiscal year 1912 the Pennsylvania R. R. paid $1,019,910 in divisions out of the rate to industrial railways connected with steel plants; the New York Central's Western lines paid $660,057; the B. & O. Ry. paid $530,317. Five industrial railways received the additional sum of $1,059,274 in per diem reclaims. In many cases the cash revenues received by these plant railways out of the rates of the line carriers covered the entire cost of their operation and even enabled the plant railway to lay up a substantial surplus and declare large dividends on its stock. Annual dividends of the B. & S. P. R. R. Co., plant railroad of the Maryland Steel Co., have ranged from 20 to 55 per cent a year. In 1911 the railroads performed for a single steel industry, the Republic Iron & Steel Co. of Youngstown, Ohio, free spotting services on 75,134 cars at a cost of $104,329, or $1.40 per car. The industry maintains between 35 and 40 miles of standard gauge tracks; and instead of the railroad's transportation service ending where the plant tracks begin, cars are spotted to and from such points within the plant enclosure as the steel company requests. The industrial concerns for which such services are rendered are numerous. On the Pennsylvania lines, east, there are 233 plants with private tracks within their yards, on which the line carrier without charge spots cars. These allowances and free services were never taken into consideration in fixing the rate, but are concessions from the rate. Nevertheless, the favored industries seek to justify the allowances on the ground that in handling their own traffic into and out of the plant they are performing a part of the carrier's service of transportation, and the free services on the ground that the transportation services of the carrier extends into a plant and to and from each separate building and points within it reached by the plant rails. Either the privileges and advantages enumerated must be held unlawful concessions, or if lawful, the principles justifying them must be clearly defined and like privileges and advantages extended to all industrial enterprises served by carriers, large or small. The very carriers that are augmenting expense accounts and dissipating revenues in this manner, complaining that their earnings are insufficient, are asking permission to increase rates. If further burdens through increased rates may justly be imposed on the general public, unlawful concessions, rebates and preferences in the interest of a small proportion of the shipping public must be eliminated. The order instituting the proceeding embraces all industries with plant railways east of the Mississippi River, though the investigation has been confined to iron and steel industries in that territory. As a result of investigations, it appearing that allowances to industrial railroads were illegal where no real service of transportation was performed, committees undertook to determine what industrial railroads connected with iron and steel industries were "real railroads," and in 1911 recommended to the Commission that allowances might lawfully be continued to 6 designated industrial railroads only.

This raising a storm of protest from other industries, the Commission disregarded the recommendation and undertook a general investigation. It includes all short lines of railway serving industries of any kind in Official Classification Territory, though the record thus far made is confined to plant railways of iron and steel industries east of Chicago. **Character of Industrial Railways.** The ordinary iron and steel plant covers from 25 to 125 acres, often inclosed by fences and gates. The necessity of having a convenient dumping ground for refuse determines the location of the plant either on a river bank or lake shore, where the submerged lands may be filled, or on or adjoining lowlands or gullies. Plant rails and locomotives are provided to dispose of the waste materials, but the plants have other and more important uses for rails and locomotives, which are a necessary facility in and about every plant. The plant tracks are used not only for interchange of cars between the rails of line carriers and points within the plant, but for movement of material between its various departments. In some cases the plant tracks are operated as a department of the industry, in others by an incorporated railroad company; in some cases the industrial railway performs only the interchange switching, the industry doing own interwork switching, in other cases the incorporated industrial railroad perfoms both services; and in addition to standard-gauge, the larger industries maintain narrow-gauge tracks confined exclusively to mill-work. In all cases there is practical identity in ownership of plant railway and plant. Generally, tracks of the line carriers adjoin the industry and interchange would readily be performed by the line carrier by means of a short switch track. Where the plant is located at a distance from a line carrier, the industrial railroad usually extends its rails to the trunk line. Where plant tracks were taken over by an incorporated industrial railroad the tracks of the latter are generally extended around the plant in so as to exclude the trunk lines from direct access to the plant, except over its rails; resulting in an apparent intermediate service by the latter between plant and line carrier, on the basis of which the plant railroad exacts compensation, not from the industry, but out of the rate of the line carrier. In several instances the trunk line originally ran through the plant enclosure, and was removed and relocated at a distance, ostensibly to make room for mills and buildings, but really to give the industry an opportunity to interpose its plant railway. **Relocation of Trunk Line Tracks at Industries.** In 1900 the Erie R. R. tracks, running through the center of the Newburgh Steel Works yard, were removed without the plant, the expense, $500,000, being paid by the American Steel & Wire Co., a subsidiary of the steel corporation, and the Pa. R. R. which originally crossed the plant premises, were also removed at the expense of the National Tube Company, another subsidiary. The tracks of the Pa. R. R. originally extending 150 feet nearer the river at the plant of the Carnegie Steel Company at Clairton, Pa., were removed at the steel company's expense and the original right of way conveyed to the company. When the United States Steel Corporation, commenced building its great plant at Gary, a large area of land adjoining Lake Michigan had been purchased, the entire lake frontage of which was occupied by the four-track main line of the L. S. & M. S. Ry., and the double-track main line of the B. & O. R. R. extended directly through the center of the plant area. The expense of removing these lines from the lake front, $7,000,000, was borne by the steel corporation by capitalizing that amount in the cost of its plant railway, the C. L. S. & E. Ry. Co.; giving full control of the rail facilities to and within the plant to the plant railway. Its tracks aggregate 114 miles, and its operations became so enormous that it was deemed inadvisable to continue the allowances to it as an industrial railway, and it was accordingly leased to the E. J. & E. Ry. to give a semblance of legality to the liberal divisions accorded it by the line carriers. **Public Service of Industrial Railways.** The industrial roads, with the exception of one or two plant lines, have no passenger traffic; none of them carry mail or express; only one issues bills of lading and but one has a depot for less-than-carload shipments. Nor are any of them terminal railroads, as that phrase is commonly used. Outside business is not solicited, but discouraged. It varies from ¼ per cent to 12.66 per cent in the case of the S. B. R. R. In General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C., 237, it was held a plant railway engaged solely in moving cars between the plant and point of inter-

change with a trunk line was not entitled to demand compensation from the latter out of the rate. **Undue Discriminations Inevitable.** That these practices result in undue preferences and unjust discriminations is abundantly shown. Of 30 plant railways considered, all but 11 receive allowances. Of the seven, the interchange switching in two instances is performed by the trunk lines under a pooling arrangement, the cost being divided; at one the interchange and interworks switching is performed by the industry and the costs divided between it and the trunk lines; while at the other four the entire service is performed by the industry without allowances of any kind. There is no uniformity, even as between industries in the same locality. In some cases the trunk lines make no allowances but the so-called furnace allowances, while in others allowances are made on both inbound and outbound shipments ranging from $1 to $2.50 per car. They are not regarded as having any relation to the rate, but are simply concessions out of the rate to secure the traffic. This is no less true of the free service of the trunk lines in participating in the manufacturing process by arranging to switch cars to the furnaces, not at their own convenience, but in such manner as to meet the requiremets of the furnaces. **Per Diem Reclaims.** A large additional amount is also contributed through so-called per diem reclaims. The ordinary switching or terminal line, when a member of the per diem agreement, is under an expense of 45c a day for each car of a trunk line held on its rails. Usually such lines have no equipment of their own on which they may in turn earn revenues from the trunk lines. That the per diem charge may not unduly deplete the revenues of the switching lines, the latter under the modified agreement are entitled to a reclaim against their immediate trunk-line connections for a stipulated number of days. The period ranges from 3½ down to 5½ days. The industrial line is required to pay to the trunk line owning the car a per diem charge for the number of days the car is actually on its rails; but. under its right to make reclaim for the whole period upon its immediate trunk line connection, the industrial line makes a profit of 45c per day for each day saved out of the designated reclaim period by prompt return of the car, thus turning a charge into a source of revenue. Of the 30 industrial railroads, 10 are members of this per diem agreement; five of which in 1911 received per diem reclaims amounting to $1,059,273. One of them earning more than $600,000 a year. Even when an industry detains a car beyond the maximum time allowed under the per diem agreement, and a demurrage charge results, it is paid, not to the line carrier but to its industrial railroad and hence into its own treasury. After Jan. 1, 1914, per diem reclaims will no longer be a source of revenue to the industries; but they will still enjoy immunity from demurrage. **Switching and Spotting.** Many plants have installed plant railways for necessary industrial purposes, and yet look to the line carriers to do their inbound and outbound switching, and in some cases even interworks switching, without charge; resulting in services rendered by the line carriers, which, if charged for, would augment their revenues by millions of dollars. For instance, the Pennsylvania lines east of Pittsburgh have 4,200 private sidings on which spotting is done without charge. On its main and branch lines there are about 400 systems of tracks within plants; at 233 of which the line carrier performs gratuitously the service of spotting cars in and around the plant. At 145 the spotting is done with the power of the industry, and at 24 partly by the industry and partly by the carrier. **Incorporating Plant Railways.** Several iron and steel industries receive allowances although their plant railways have not received the status of a common carrier by incorporation; but most of the industrial roads receiving allowances are incorporated. The Bethlehem Steel Company has 50 or 60 miles of standard gauge tracks within its plant, but has never received allowances. Recently it has incorporated 1½ miles of track outside the plant as the P. B. & N. E. Ry. for the avowed purpose of securing allowances. **Furnace Allowances** The last of the four different forms in which line carriers make contributions to iron and steel industries is through so-called furnace allowances. These are $2.25 a car on ore, $1.75 on coke and $1.60 on limestone. It is claimed that these allowances are paid in order to equalize conditions at the various blast furnaces. Allowances in these amounts are made to only five of these industries, and in nine instances

no allowance whatever is made. Seven of the plant railways are allowed 10c a ton on inbound and 15c on outbound shipments; in another case 10c both ways. The allowances paid and free services performed by line carriers for industrial railways involve in the aggregate an immense expenditure for which the carriers must necessarily be reimbursed through the rates exacted on traffic of the general public; while at the same time they relieve the particular industries concerned of a large burden of expense which they would otherwise have to meet as a part of their manufacturing cost. HELD, this operates as a discrimination against the smaller competitors of the favored concerns because, in the nature of things, the benefit of such allowances and free services can be enjoyed only by the larger industrial establishments with plant railways; FURTHER HELD, that all the services by the line carriers beyond a reasonably convenient point of interchange between the rails of the carrier and the rails of the industry, either within or without the plant, is a shipper's service, and not a service of transportation, which the line carrier may perform without charge or may allow for out of the rate through divisions or otherwise, when performed by the industry or by its industrial railroad, and that the facilities used by the industry in performing the service, whether separately incorporated or not, are plant facilities and plant equipment; that the delivery of a car by a line carrier upon the exchange track is a delivery to the industry, and that the elimination of demurrage as a transportation charge against the industry is unlawful, and gives the industry so favored an undue and unreasonable preference and advantage; that undue and unlawful preferences and discriminations arise out of the present practice of the line carriers in performing such services without additional charge, and in making allowances therefor out of the rate when performed by the industry or its plant railway; that the line carriers are not compensated for such services in their rates, and that the allowances therefor out of the rates are unlawful rebates paid for the traffic and when performed by the line carriers are unlawful rebates in service, paid for a like purpose. Industrial Railways Case, 29 I. C. C., 212.

(b) **Lake Terminal Railroad.** In this case the service performed by the industrial railroad and designated as interchange switching for the trunk lines is so inseparably connected with what is admittedly a plant service that it is difficult to fix the line where one ends and the other begins. The plant of the National Tube Co., a subsidiary of the United States Steel Corporation, served by this road is located at Lorain, Ohio, and was constructed in 1894 or 1895. The plant property is enclosed by a fence. The L. T. R. R. Co. was incorporated in 1895, six years before the organization of the U. S. Steel Corporation, and the road and equipment, theretofore owned and operated as a plant facility, taken over by the company and paid up stock in the sum of $2,000,000 issued therefor. The L. T. R. R. Co. owns 33 miles of track, and also operates under lease 29 miles of track owned by the tube company. The industrial railroad handles inbound between 80 and 90 carloads per day of ore, half as much coke, and 30 cars of limestone. The distance between plant and trunk-line connections is from 2½ to 5 miles. During 1911 the road handled 165,740 loaded cars on which the revenue amounted to $513,508. Of this, 104,802 cars, earning $421,834 were switched from the National Tube Company and other subsidiaries of the U. S. Steel Corporation; 361 cars, earning $1,290 for outside shippers; 84 cars earning $94.50 were switched between the trunk lines; and 60,439 cars, earning $90,739 were handled in inter-mill switching for the industry. Including the ore cars, only ¼ per cent of the L. T. R. R. service was performed for interests or concerns outside the National Tube Company. In 1911, freight charges were collected from consignees on only 7 cars. The service of switching the inbound raw material does not end until the cars are placed at the consuming point. The allowances received from connecting lines are 10c per gross ton on inbound material and 15c per net ton on outbound products. An allowance of $1 and $2.50 per car is made on certain commodities, and on others 25 per cent of the through rate. The per diem charges paid by the L. T. R. R. in 1911 amounted to $87,268, while the amount of reclaim for the same period was $126,073. Of the total operating revenue of $513,508 for the fiscal year 1911, $141,092 was derived from the tube company and $372,413 from allowances from connecting trunk lines. The tracks of the B. & O. R. R. and the N.

Y. C. trunk lines extend to the property line of the industry. The divisions and per diem reclaim paid the plant railway, besides relieving the industry of the entire cost of operating the plant railway, afford a substantial return on its investment in that part of its plant equipment. It has near the rails of the B. & O. R. R. and at one or two other points, public team tracks, used by certain shippers residing or doing business near the plant tracks, but these are within the plant fence and the gates giving access are guarded by tube company watchmen. Also, the L. T. R. R. does some switching between the trunk lines and handles a small amount of traffic for outside interests. In 1911 this amounted to but ½ per cent of the total traffic handled. All ore unloaded at the dock of the tube company belongs to the United States Steel Corporation, and is used either by the tube company or other subsidiaries of the steel corporation. During the last calendar year nearly 1,750,000 tons of ore unloaded on the dock were hauled through the plant by the plant railway and turned over to connecting trunk lines for carriage to various industries controlled by the steel corporation. Although the B. & O. R. R. has a dock where ore could be landed, it permits this plant facility to absorb a substantial part of its earnings on ore moving over its rails to interior points. HELD, that all the services performed by the L. T. R. R. are purely a shipper's service. The carriage of the outbound traffic of the industry, as a service of transportation, begins at the interchange tracks where the inbound transportation service also ends. In conducting a service for the plant beyond that point, the tracks and locomotives of the industrial railway are mere plant facilities, and the expense of their operation is legitimately a manufacturing expense, which ought to be borne by the industry and may not lawfully or fairly be assumed by the carriers and through them cast on the general public. Industrial Railways Case, 29 I. C. C. 212, 238, 288.

(c) **Baltimore & Sparrows Point Railroad.** While this industrial line is not owned by the Maryland Steel Co., there is an almost complete identity of ownership. The real estate of the industry consists of about 1,000 acres at Sparrow Point, on the north shore of the Patapsco River in Maryland. The ore used is shipped principally from the mines of the Spanish-American Iron Co. in Cuba. The Pennsylvania Steel Co. of Pa., the Maryland Steel Co., the Spanish-American Iron Co., and the B. & S. P. R. R. Co., are all owned or controlled by the Pennsylvania Steel Co. of N. J., the stock of which is in turn owned by others; the Pa. R. R. owning 68.74 per cent, the Reading R. R., 29.45 per cent. The Maryland Steel Co. not only owns all the real estate mentioned, but its policy is to retain ownership. The town of Sparrows Point, with a population of 6,500, is built almost entirely on land owned by the company. Most of the buildings and public facilities are also owned by the company. The B. & S. P. R. R. owns two locomotives but no other equipment. It is 5.4 miles long and extends from a connection with the P. R. R. and the B. & O. R. R. at Colgate Creek to Penwood Park, about 1 mile beyond the company town. This park is company property. The steel company has a system of tracks within the plant which it operates with its own power; the B. & S. P. doing no interplant work. The steel company owns its own docks, the B. & S. P. not even having access to it, though its tracks approach within a hundred yards of the dock. Sparrows Point is one of the best ports in the Maryland territory, but by this arrangement the industrial road protects itself from being called upon as a common carrier to carry ore for competitive mills. There are only two independent industries on the B. & S. P. R. R., and outside interests furnish but 5.51 per cent of its traffic. Bills of lading are issued by the trunk lines; not by the industrial line. On package freight between Baltimore and Sparrows Point the P. R. R. allows the industrial line 1-3 of the net revenue; the B. & O. R. R. allows 10c per net ton. The B. & S. P. R. R. is a member of the per diem agreement and receives 3½ days reclaims. Cars are interchanged on a demurrage basis. In 1907 the per diem paid exceeded the reclaim allowances by $10,170, but in the succeeding 5 years the reclaims exceeded the per diem paid by $20,000. The B. & S. P. R. R. has no passenger traffic, but a passenger train service is conducted by the Northern Central (P. R. R.) between Baltimore and Sparrows Point over its tracks for the use of which the B. & S. P. receives a persentage from the fares. Total dividends to June 30, 1912, aggregated $635,500;

more than 423 per cent on the investment. HELD, that the whole situation is a mere device to lay a foundation for relieving the industry of the cost of operating its industrial railway and casting it upon the public. Though called a regular railway it is not such, since one terminus is completely surrounded by the plant of the proprietary company, so that the public has no access to it, the private dock and the plant forming a complete barrier. Industrial Railways Case, 29 I. C. C. 212, 243, 356.

(d) **Newburgh & South Shore Railway.** This railway was built for the purpose of connecting two widely separated departments of the plant, and performs no service in connection with movement of inbound raw material or outbound manufactured product that was not previously performed by the trunk lines. The plant of the American Steel & Wire Co. at Cleveland, O., consists of four departments known as the Emma Furnace, Newburgh Steel Works, and Newburgh Iron Works, all located at Newburgh, a subdivision of Cleveland, and the central plant located near the center of Cleveland. The first three are in close proximity, and will be referred to as the Newburgh plant. The N. & S. S. Ry. Co. was formed in 1899 and took over existing tracks and equipment under a lease from the wire company, and by 1904 completed the construction of tracks to connect the several plant tracks. In the same year the capital stock of the railway was increased to $1,500,000. There are no bonds, but there is a floating debt due the wire company of about $600,000. The entire capital stock, except that held for qualifying directors, is held in trust for the benefit of the U. S. Steel Corporation and its subsidiary, the American Steel & Wire Co. The trackage is 55.27 miles; 30.68 miles owned, and 24.59 miles leased from the wire company. Nothing is paid for the lease of the tracks, while the wire company is charged for internal switching performed by the industrial railway. The latter, however, bears the entire cost of maintenance, not only on the interplant tracks but also on the tracks inside the plants which are used exclusively for the plant's benefit. Equipment consists of 19 locomotives, 855 freight cars, and 5 passenger cars; and is owned by the industrial railway. When the wire company decided to build this railway, the tracks of the Erie R. R. were moved a distance of about 300 feet, the wire company paying the expense of relocating the Erie tracks, about $500,000. The N. & S. S. R. R. has several yards with car storage capacity of about 1,700 cars. The total value of its property is $2,939,692. It has track connection with and through the C. S. L. R. R. with the the B. & O., the W. & L. E. R. R.'s N. Y. C. lines. It also connects with the R. T. Ry. owned by Corrigan-McKinney Co., and the C. V. Ry., owned by the Cleveland Furnace Company. The service performed by it consists in interchange switching between trunk line connections and the various departments of the plant, and interworks switching at each of the plants. It daily switches 45 cars of ore from the docks at the central furnace to the furnace bins. Some of the slag is disposed of to other railways, some crushed and used for commercial purposes; and some used to fill gullies to provide space for railroad yards; the N. & S. S. making a charge for the movement from the furnace, irrespective of what it is used for. It does not serve any industries other than the wire company, but does serve a number of other shippers, among them the Standard Oil Co., the Farr Brick Co., the Rybak Sand Co., and the Great Lakes Towing Co. During the fiscal year 1911 it handled 148,501 cars, earning $471,893, for the wire company, of which 53,622 cars, earning $228,274 were interchanged with the connecting trunk lines; and 4,861 cars, earning $16,168, for outside shippers. Thus 96.69 per cent of its freight revenue was derived from service for the wire company. The railway runs two passenger trains of 5 coaches each way daily between the Newburgh and central plants, about 90 per cent. of the passengers being employes of the wire company. Where the rate of the trunk lines is 40c per ton or more, they absorb out of the through rate 10 per ton on coal, coke, limestone, sand, brick, and pig-iron, and 15c on billets, scrap iron, and finished products. Less than carload shipments are handled in transfer cars, the charge of $2.50 per car being absorbed by the trunk lines. The rate for handling hot metal is 25c per ton, minimum $2.50 per ladle. There are no depots for handling less-than-carload freight, nor any public team tracks. The industrial railroad issues local bills of lading which are exchanged for bills of lading issued by the trunk lines. It is allowed a reclaim of 5 days, but sup-

plies cars to the industry under the average demurrage rule. It receives the 5-days reclaim whether the car is detained one day or five days. For the fiscal year 1911 the total operating revenue was $505,466; of which $7,183.50 was from passenger service, $488,084 from switching service, $9,413 from car demurrage, and $786 from rents and miscellaneous items. HELD, that the N. & S. S. Ry. Co. is simply a plant facility of the American Steel & Wire Co., and performs no service of transportation for which it may lawfully and without undue discrimination be compensated by the connecting line carriers out of their rates. Industrial Railways Case, 29 I. C. C. 212, 247, 295.

(e) **Monongahela Connecting Railroad Company.** In the early eighties Laughlin & Co., Limited, owned a plant on the north bank of the Monongahela River in Pittsburgh, in the vicinity of which were a number of other independent industries. On the other bank Jones & Laughlin, Limited, operated rolling mills and a steel plant. There were only 4 railroads entering Pittsburgh; the B. & O. and P. J. R. R. on the north of the Monongahela and the P. V. & C. R. R. and the P. & L. E. R. R. There was no bridge by which the railroads on one bank could connect with those on the other. The M. C. R. R. Co. was incorporated in 1885 with a capital stock of $30,000, subsequently increased to $750,000, the Monongahela bridged, and Jones & Laughlin and Laughlin & Co. sold to the railroad their respective rights of way on either side of the river. At first the trains crossed the bridge from the furnaces on the north bank to the steel mills on the south bank on regular schedule time, but eventually the bridge was widened and a separate track provided for the transmission of molten iron. During the construction of the bridge and the line connecting Laughlin & Co. with the P. & L. E. R. R., an arrangement was made for payment to the M. C. R. R. Co. of 20c a ton on ore, $1.50 per car on limestone, and $2 per car of coke. In this agreement we have the origin of allowances to plant railroads. The agreement was restricted to the traffic of Laughlin & Co., Limited. In 1888 a further agreement was effected to interchange traffic for the other industries on the north side of the river, an allowance of $2.50 per loaded car being made on all traffic except the raw material used at furnaces on which was paid $2.25 per car on ore, $2 on pig metal, $1.75 on coke, $1.60 on limestone and $1.10 on coal. Upon the secret agreement with Laughlin & Co. becoming known in railroad circles the latter allowances were applied to all blast furnaces in the Pittsburgh district. In view of increase in the tonnage of cars, the allowances were changed to a tonnage basis, being fixed in 1909 at 10c a ton on pig iron and lower classified commodities, and 15c on finished products of a higher classification grade. Laughlin & Co. and Jones & Laughlin have been incorporated as the Jones & Laughlin Steel Co. Its plant covers 198 acres; 128 to the north and 70 to the south of the Monongahela River. The equipment consists of 34 locomotives and 660 cars. The M. C. R. R. has a total operating trackage of 36.93 miles. Much of the right of way is held under deeds or easements from the steel company, which reserves the right to relocate the tracks of the railroad as convenience may require. The total cost of road and equipment is $2,524,000. Its capital stock is $750,000 and there is a funded debt of $685,000. Of the 7,500 shares of stock the steel company owns 7,420. The aggregate dividends were $1,045,500, and on June 30, 1911, there was an accumulated surplus of $1,232,000. The M. C. R. R. is allowed an arbitrary reclaim of 4½ days. The excess of reclaims over the amount paid for per diems averages $3,520 per year. In 1911 the total demurrage paid by the steel company to its industrial railroad was $5,306. There are five public team tracks on which carload freight is loaded and unloaded, but no depot for assembling less-than-carload freight. The M. C. R. R. issues no bills of lading and no passenger service is maintained. When the road commenced operation the business handled for independent concerns amounted to 34 per cent of the total tonnage, but in 1911 only 3.49 per cent of the tonnage was on account of outside firms. At the plants of the Jones & Laughlin Steel Co. all the inbound material is spotted by the M. C. R. R. and outbound shipments handled by the power of the steel company to the plant interchange track and there taken by the M. C. R. R. and classified into trainloads for delivery to connecting trunk lines. The average distance from interchange with connecting trunk lines to points of placement is 2½ miles. The furnaces being on the north side of river while the steel mills are

on the south side, all the metal used on the south side must be transported in a molten condition, the plant could not be operated economically without a plant railway. The railway performs the switching between the interchange tracks of certain independent shippers and the tracks of the line carriers, but this is merely incidental to its service of the steel company. It has no policy as a railroad and shows no purpose to develop into a real facility for the public. HELD, that the M. C. R. R. performs no service of transportation for which it may justly and lawfully be compensated by the connecting line carriers out of their rates. And the outside shippers who use the plant equipment of the Jones & Laughlin Steel Co. to serve their purposes are not entitled to have the line carriers bear the burden of expense out of their rates. Industrial Railways Case, 29 I. C. C. 212, 249, 320.

(f) **Union Railroad.** The Carnegie Steel Co., a subsidiary of the U. S. Steel Corporation, has several plants operated as a unit, on either side of the Monongahela River in the Pittsburgh district; the separate departments being known as the Edgar Thompson, Duquesne, Homestead Steel, and Howard Axle Works, and the Carrie furnaces. At each plant there is a system of tracks, which formerly connected immediately with the trunk lines; but in 1894 the U. R. R. was organized and built a line connecting with the tracks at all the plants. The plants and tracks of the U. R. R. and trunk lines occupy all the available space so that no room is left for the location of an independent industry. The capital stock of the U. R. R. is $2,000,000; funded debt $4,350,000. Of the latter $2,000,000 is in first mortgage bonds, the balance in equipment trust bonds. The former were issued to the steel company, in payment for $1,125,000 advanced by it to the U. R. R. That is, on the $2,000,000 of bonds the discount was $875,000. At the time, the U. R. R. owed the steel company $1,934,040, the difference between which and $1,125,000 paid by the issue of bonds has since been paid out of the accumulated surplus of the U. R. R. The total operated trackage of the U. R. R. in 1911 was 191.17 miles, of which 56.35 are main line and 134.82 miles are yard tracks and sidings. In addition to the tracks operated by the U. R. R. the steel company has a system of private tracks at each plant which it operates with its own equipment. These tracks aggregate 112.51 miles of standard gauge and 33.30 of narrow gauge. The standard gauge tracks are used by the U. R. R. for spotting cars and by the steel company with its own power for the internal work. Equipment of the U. R. R. consists of 122 locomotives, 6 passenger cars, and 5,431 freight cars. Of the latter 637 are used exclusively in plant service. Of the right of way of the U. R. R., 55 acres was purchased from the steel company for $2,645,850, and 31 acres leased at $93,123 per year. This was at a valuation of $50,000 per acre, though $15,000 would have been a fair price. The U. R. R. has two bridges across the Monongahela, provided with separate tracks for ordinary switching movements and for the movement of hot metal. The road has yards with an aggregate capacity of 19,328 cars, used almost exclusively for the convenience of the industry. In 1911 the actual value of the physical property of the U. R. R. was $18,224,233, while the total received by it for the same period was $11,965,332. The U. R. R. has 5 separate connections with the P. R. R., 4 with the P. & L. E. R. R., 2 with the B. & O. R. R., 1 with the B. & L. E. R. R., and 1 with the West Side Belt R. R., through which it reaches the Wabash and the St. C. T. R. R. The P. R. R., the P. & L. E. R. R., and the B. & O. R. R. formerly connected directly with one or more of the steel company's plants, but with the organization of the U. R. R. they have been excluded therefrom. About 50 per cent of the cars of coal delivered by the U. R. R. to the B. & L. E. R. R. go to Conneaut Harbor and are loaded back with ore for the steel company. In addition to the American Steel & Wire Co. and the Universal Portland Cement Co., subsidiaries of the U. S. Steel Corporation, the U. R. R. serves nine other industries. It handles about 4,000 tons per day for the Universal Portland Cement Co., but most of the raw material of that company comes from the steel company and affiliated interests. In addition to the switching service for the steel company and others, the U. R. R. conducts, as necessary facilities of the industry, the Duquesne coal docks, a scrap yard, and a loading and unloading service in the storage yard of the steel company. In 1911 it switched between the plants and the trunk lines, 445,863 cars, earning $2,725,025; switched be-

tween connecting trunk lines 36,541 cars, earning $198,966; public switching, 23,354 cars, earning $119,574. Thus 93.62 per cent of the cars and 91.20 per cent of the revenues applied to service performed for the controlling interests. The superintendent of transportation at each plant, who has entire control of the internal switching, is carried on the steel company's pay-roll and is in no way subject to the orders of the U. R. R. There is no profit on the internal switching done by the U. R. R. for the industry; it is done at cost, and the cost does not include the item of interest on the investment in equipment. The U. R. R. is a party to the per diem and reclaim agreement. The number of days' reclaim allowed from January, 1911, was 4½ days. Total demurrage collected Oct., 1910, to Jan., 1912, was $30,080; $27,125 from the constituent companies and $2,955 from others. The U. R. R. receives divisions from the B. & L. S. R. R. on lake ore; when consigned to points on the U. R. R., 26c; when to the Clairton plant 17c; and when to the McK. C. R. R. 10c per gross ton. The Wabash allowed a division of 25c on lake ore and 35c on finished products when its rate exceeds 75c per ton. All other trunk line connections make an allowance of 10c on inbound raw material and 15c on outbound finished products. The operating revenue of the U. R. R. for 1911 was $3,640,476. Total operating expenses were $2,802,746, leaving a net operating revenue of $837,729. The aggregate dividends paid is $1,760,000, which is about 88 per cent of the capital stock of $2,000,000 or about 5½ per cent per annum. The U. R. R. does not itself conduct a passenger business, the regular passenger business being conducted by the B. & L. E. R. R. over the tracks leased to the U. R. R. between North Bessemer and East Pittsburgh. Under a contract with the Universal Portland Cement Co. the U. R. R. runs a special passenger train to carry employees between East Pittsburgh and the plant, receiving 68c per train-mile. No tickets are sold, and the fare is paid, not by the passengers but by the Cement company. The line carriers can gain access to the combined plants of the Carnegie Steel Co. only over the tracks of the U. R. R. There is a constant and necessary movement of material between the different departments or plants, which could not be operated as they are now without the tracks of the U. R. R., all of whose track facilities are constructed and located for the convenience and economy of serving the steel company. The rails of the P. R. R. not only extend through the homestead works, but adjoin the other plants; the tracks of the P. & L. E. Ry. extend to the property lines of three of the plants; and the B. & O. R. R. also reaches two of the plants and its tracks pass directly through a third. The U. R. R. has not solicited outside traffic, nor at any time shaped its policy so as to encourage outside traffic or to put its facilities at the service of the public, except to the extent that the controlling interests find helpful in giving it the color of a common carrier. In 1911 about 36,000 cars were handled by the U. R. R. between the connecting lines; more than 10,000 of these, however, contained ore of the steel corporation from its boats at Conneaut Harbor. Out of the through rate of 96c a ton, in effect from Conneaut to the Clairton plant, a constituent member of the steel corporation, the dock company received 2c, the B. & L. E. R. R. 45.2c, the U. R. R. 17c, and the St. F. R. R. 16.8c, leaving to the west side Belt, the only outside facility in the through movement, only 15c per ton. HELD, that the U. R. R. is entirely a plant facility which the proprietary interests use for their own benefit and convenience in their manufacturing operations, and the burden of which they alone lawfully may bear. As to the coal received by the U. R. R. at Mifflin Junction,, however, for movements northbound to points on the B. & L. E. R. R., a service of transportation is performed for which the U. R. R. is entitled to a compensation out of the through rate. To prevent discrimination the Commission will, however, reserve control over its divisions. Industrial Railways Case, 29 I. C. C. 212, 252, 330.

(g) **South Buffalo Railway.** The plant of the Lackawanna Steel Co. was located at a point distant from the trunk lines for the twofold purpose of obtaining cheap lands and of having an opportunity through an industrial railway of its own to participate profitably in hauling its own traffic. It was established in 1899 at Stony Point, adjoining Buffalo, N. Y. The S. B. Ry. was incorporated in 1899 and has a capital stock of $500,000, all of which except that held for qualifying directors is owned by the steel company. The officers of the

two companies are practically identical. Construction of both plant and railway were begun in 1900, and trunk line connections effected with the L. S. & M. S., the B. C., the D. L. & W., the B. R. & P., the L. V., the B. & S. R. Rs., and the P. R. R., and the Erie R. R., at various times from 1901 to 1908. The main line of the S. B. Ry. is 5.91 miles in length, 1.86 miles of which is within the plant property. It also owns 2.23 miles of branches and 7.81 miles of spurs and sidings, and leases from the steel company 47.32 miles of yard tracks and sidings. It also has trackage rights over the D. L. & W. R. R. from its connection with that line to the D. L. & W. Ry. passenger station, 3 miles. The Lackawanna Steel Co. also has 18 miles of standard-gauge and 11 miles of narrow-gauge track, which it operates with its own equipment. The equipment of the S. B. Ry. consists of 23 locomotives and 64 cars, and it leases 9 locomotives from the steel company. None of the equipment goes off the line. All the tracks owned by the S. B. Ry. are located on its own right of way, though a part of the right of way is enclosed by the fence of the steel company. The land through which it passes is partly low and swampy and can only be made available by filling with waste material from the industry. The net investment value of railroad and equipment is stated at $1,095,485. The S. B. R. R. performs interchange switching with the trunk lines, and practically all the interworks switching over the tracks of the steel company, which it leases. In addition, the steel company performs interworks switching with its own power over the narrow-gauge tracks; where ore received at the dock is shipped to other points it is switched by the S. B. Ry. In 1911 there were 207,340 cars handled, 87.34 per cent of which were for the industry and 12.66 per cent for other shippers. Of the total handled, 97,239 cars were switched to and from connecting carriers. In addition to the plant of the Lackawanna Steel Co., the S. B. Ry. serves the Lackawanna Bridge Co., Rogers-Brown Iron Co., Advance Supply Co., Buffalo Break Beam Company, Seneca Iron & Steel Co., Corrugated Bar Co., and Trumbull, Mudge & Co., most of which purchase their materials largely of the Lackawanna Steel Co. They are located adjacent to the rails of the line carriers and would be immediately on the rails if the S. B. Ry. did not intervene. Interchange switching for the steel company and others to the nearest trunk line involves a haul of from 1,750 feet to 2.18 miles outside of the plant property; to connections farthest from the plants, from one-half mile to 5.75 miles. The S. B. Ry. receives allowances from the connecting trunk lines of 10c on raw materials and 15c on outbound manufactured products where the rate accruing to the trunk line is 50c or over, where the rate is less no allowance being made; but $2.50 per car is collected from the consignee or consignor. The S. B. Ry. issues through tracks, and handles from 35 to 40 cars of less-than-carload freight per month. It has a small station within the plant property. In 1911 the total operating revenue was $676,471. Of the total freight, of which $372,263, or 57.33 per cent, was derived from allowances by the line carriers, the road has paid no dividends. It operates a passenger train service between the industry plant and the D. L. & W. Ry. station in Buffalo, consisting of one train in each direction morning and night, operated over 3 miles of S. B. Ry. track and 3 miles of D. L. & W. Ry. track. It carries neither mail nor express. About 75 or 80 per cent of the passengers are employees of the steel company. The S. B. Ry. is a party to the per diem agreement, and the roads entering Buffalo allow it a 5-day reclaim. If a car goes in loaded and comes out loaded the allowance is 10 days. The total demurrage collected from shippers in 1911 was $31,209, of which $24,875 was from the Lackawanna Steel Company. In 1911 the amount of per diem paid was $162,456 and the amount of reclaims received from the trunk lines was $137,441. The ore consumed by the steel company is landed from lake vessels directly upon its own plant dock, to which the rails of the industry, leased to the S. B. Ry., extend. But the dock is not a public facility of the S. B. Ry., and although some ore is carried thence by the railway it is done only by the consent of the steel company. The B. & L. Ry. Co. has no terminals of its own in Buffalo, and although it has ample access over the rails of the line carriers, it largely uses the S. B. Ry. rails to switch its cars into the public terminals, under a reciprocal arrangement by which each uses a part of the tracts of the other. HELD, that the S. B. Ry. performs no service of transportation from, to, or

within the plant of the Lackawanna Steel Co. for which it may justly be compensated out of the rate of the line carriers. It is simply a part of the equipment of the plant, constructed for plant purposes, and wholly so used except for a small outside service performed as an incident to its service to the proprietary plant. The allowances it receives out of the rates are unduly preferential and constitute an unlawful concession from the rate, and the outside interests using this plant equipment for their own purposes may not lawfully look to the line carriers to bear the burden out of their rates. The short switching movement to them from the steel plant takes the place of cartage and is simply another use made by the plant of its plant railway in its own interest. Industrial Railways Case, 29 I. C. C. 212, 258, 363.

(h) **Lucy Furnace et al.** This furnace, owned and operated by the Carnegie Steel Co., and located at Pittsburgh, has a system of yard tracks and sidings which connect with the P. R. R., the entire service of interchange switching being performed by the industry. Distance covered is 1,480 feet; 840 over trunk line tracks and 640 feet over the industrial railroad. The industry receives $2.25 per car on ore, $1.75 on coke and $1.60 on limestone inbound; no outbound allowance. Cars are interchanged under the demurrage rule. The industrial railroad is not incorporated, but operated as a bureau of the industry. **Pittsburgh Steel Company.** This company has a steel plant and a wire mill in close proximity at Monessen, Pa., on the Monongahela River, and a system of tracks in and around the two, 10.50 miles in length and employing 4 locomotives and 35 gondola cars. It connects with the P. & L. E. R. R. Total value of railway property, exclusive of land, $150,000. The two plants are connected by a subway under the P. & L. E. R. R. The service performed consists in switching between point of placement at plant and connection with P. & L. E. Ry., one-eighth mile, a service which the latter would perform if requested. All internal switching for both plants is formed by the industry with its own power. The industry receives no allowance from the trunk line, application therefor having been made, but denied. Cars are interchanged under the so-called average agreement. Demurrage assessed against the industry from May 1 to Dec. 1, 1911, aggregated $9,917. Clear ashes and other refuse material are taken out without charge; brickbats and execavated material at tariff rates. The industrial railway, operated as a bureau of the industry, has recently been incorporated as the M. S. W. Ry. Co. **Bethlehem Steel Co.** This company has recently organized a railroad company and proposes to claim divisions. The plant is at South Bethlehem, Pa., and, in aid of its industrial operations, the company operates 49.95 miles of standard-gauge tracks, connecting the various parts of the plant with each other and with the L. V. and P. & R. railroads, which adjoin the property line of the plant. It has 20 standard-gauge locomotives and 349 cars, practically none of which leaves the tracks of the company. There are besides 8.32 miles of narrow-gauge track with equipment devoted exclusively to interplant operations. The standard-gauge system cost $2,029,589, and, including the narrow-gauge, the total value of these facilities was $2,769,520. In general practice inbound loads are delivered by the trunk lines at the steel company's yards and outbound loads by the steel company into the trunk line yards. The furnaces at the plant do not require exactitude of service in respect to coke, ore and limestone supply. In 1911 the total traffic interchanged was 98,761 loaded cars, and 112,755 empty cars handled by the motive power of the steel company, and 8,529 carloads of inbound coal, handled by the L. V. Ry. direct to point of unloading. The outbound traffic amounted to 480,891 tons. The P. B. & N. E. R. R., recently incorporated, though it has not taken over the plant railway system mentioned above, has built 3.44 miles of track to the plant of the Lehigh Coke Co., in course of construction. The steel company has no interest in the latter, except that the steel company is to supply the coal for producing coke and the coke company will supply practically all the coal needed at the steel plant. For switching between their junctions and the coke plant the trunk lines have agreed to allow the P. B. & N. E. $2.50 per car. **Cambria Steel Co.** This company has a capital stock of $50,000,000, of which the P. R. R. and the P. & R. Ry. own $22,504,100. The company has 94.26 miles of standard-gauge track in and about its plant, and equipment consisting of 35

locomotives and 1,089 cars. This is used exclusively in the plant service and does not go upon the trunk line tracks. Connections are formed with the B. & O. and Pa. railroads. The tracks of the P. R. R. parallel and approach the plant at several points, but those of the B. & O. are reached only by the extension of the industrial tracks to an interchange point in the vicinity of the plant. In 1911 the service performed for concerns in which the steel company had no interest amounted to 1,221 cars, on which the revenue was $6,105. For switching such traffic the steel company made a charge of $5 per car on certain cars, of which $2.05 was absorbed by the P. R. R. In 1911, 178,954 cars were handled, 135,757 being interchanged with the P. R. R. and 43,197 with the B. & O. R. R. The C. S. Ry. Co. is not a member of the per diem agreement, but interchanges cars on the average agreement. The steel company receives allowances from the P. R. R. of $2.25 per car on ore, $1.75 on coke, and $1.60 on limestone; and from the B. & O. Ry. of $1.75 on coke and $1.60 on limestone. Trunk lines could place cars at point of unloading by providing equipment suitable for degree of curvature on the industrial tracks. The curvature is very sharp, necessitating a special power, but the volume of business is sufficient to justify the trunk line in maintaiinng that kind of power. **Republic Iron & Steel Company.** Here the switching of cars interchanged with trunk lines is done under a pooling arrangement whereby the entire cost is divided between the interested trunk lines on the basis of the number of cars handled for each. The industry has three separate plants on the Mahoning River at Youngstown, O., the Brown-Bonnell Bessemer plant, the Hazelton furnace south of the river and a third plant on the north side, connected by a bridge. It has between 35 and 40 miles of narrow-gauge tracks and five locomotives and also a system of narrow-gauge tracks at each plant. All tracks are located inside the plant enclosures, except the hot-metal tracks connecting the plants. The trunk lines connecting are the B. & O., the P. & L. E. and the Erie railroads; and the L. S. R. R. also reaches the industry by a switching arrangement over the Erie or the P. & L. E. R. R. Interchange switching is under the jurisdiction of the industry, whose superintendent controls the locomotives and cars of the trunk lines while inside the plants. Locomotives of the industry are used exclusively for intermill work. In 1911 there was an interchange movement of 34,407 loaded cars at the Brown-Bonnell plant, and at the Hazelton works 37,727 cars. The industry is not a member of the per diem agreement, but interchanges under the average agreement, being allowed 48 hours' free time. The plant receives credit for cars released within the first 24 hours, the balance of free time being applied against any overtime on other cars up to 7 days. In the last analysis the industry pays the full rate; its allowances not coming out of the rate, but being in the form of a plant service by the trunk lines. **Youngstown Sheet & Tube Co.** This company has a plant on the north bank of the Mahoning River, 4 or 5 miles from Youngstown, O. It has 23.79 miles of standard-gauge and 5.5 miles of narrow-gauge tracks in and about the plant and equipment, consisting of 2 standard-gauge and 9 narrow-gauge locomotives. The trunk-line connections are the P. R. R., the P. & L. E., and the B. & O. R. Rs., and traffic is also interchanged with the Erie and L. S. & M. S. R. R. over the tracks of the P. & L. E. R. R. All interchange switching is performed by one of the trunk lines under a pooling arrangement. The amount of cost to be divided between the participating trunk lines is based on wages of crew and engine cost, arbitrarily fixed at $1.15 per hour. **Valley Connecting R. R. Co.** This is the plant railroads of the Stewart Iron Co. at Sharon, Pa., and connects such plant with the Erie, Pa., and L. S. R. Rs. The industry furnishes the necessary locomotives for switching at a certain rental, the cost of switching, both interworks and interchange, including such rental, being divided monthly between the three trunk lines and the industry, in proportion to number of cars handled for each. Thus the industry gets its cars spotted to points of loading or unloading without expense, and pays actual cost of interplant switching. **Wickwire Brothers.** This company has a plant at Cortland, N. Y., with 3.72 miles of track, which it operates with 3 locomotives. The track was laid by the D. L. & W. R. R. and the L. V. R. R. at their joint expense, but under agreement that the industry might purchase it at any time. The interchange switching involves a

haul of 2,000 feet. No allowances are made to the industry. No service is performed for outside industries. In 1911 there were 5,760 carloads interchanged under the demurrage rules, at a cost to the industry of $25,000. **Wheeling Steel and Iron Company.** This company operates a plant at Benwood, W. Va., in connection with which it has 2 furnaces at Wheeling, W. Va., and one at Martin's Ferry, O., at which it has a total of 10.7 miles of track and 6 locomotives. Service at each plant consists of both internal and interchange switching with trunk lines, the average distance covered being 500 feet. No divisions or allowances are accorded. Cars are interchanged under the demurrage rules. At the Belmont and Martin's Ferry plants the slag is granulated and removed by the trunk lines without charge. In 1911 traffic interchanged with the P. R. R. amounted to 1,030,421 tons, with the B. & O. R. R. 228,542 tons, and with the W. & L. E. R. R. 21,913 tons. **Benwood & Wheeling Connecting Ry.** This company has no tracks of its own, its entire operation being over tracks leased from the National Tube Co., whose plant is located at Benwood, W. Va. Its owned equipment consists of 7 locomotives and 2 cars. The B. & W. C. Ry. was organized in 1900 with a capital stock of $1,000,000, only $100,000 of which has been issued and turned over to the tube company. It operates 11.90 miles of tracks owned by the tube company and enclosed within the plant compound. Excess of revenues over operating expenses is turned over to the tube company. The present lease of tracks is from year to year, and provides for an annual rental of $10,000 and that the railway shall perform all internal switching at $1.50 per car. From 1900 to 1910, inclusive, the railway company paid to the tube company $133,459, and paid the entire cost of maintenance and renewals. Interchange switching embraces about 70 per cent of the entire service performed, about 30 per cent being intermill service for the industry. This is precisely the service the company performed directly for itself before it turned the facilities over to its incorporated railroad company. The only other industry served by the B. & W. C. Ry. is a Solway plant located on the property of the tube company. Cars of raw materials are hauled from trunk line connections to stock pile or storage yard of the tube company and later switched to the furnaces as required, in some instances direct from connections to furnace. The time and extent of service of switching inbound material is largely dependent upon the requirements of the furnaces; and the situation is such that interplant service must necessarily be taken care of by the same power that brings in the coal. The B. & W. C. R. R. is a member of the per diem agreement and is allowed 4 days' reclaim. In 1911 the amount of reclaim exceeded the amount paid for per diem by $5,168. The B. & W. C. R. R. receives no allowances from connecting trunk lines on inbound material or outbound manufactured products, but an allowance of 10c a ton on steam coal is made by the B. & O. R. R. HELD, that no reason exists for classifying a part of the operations of this road as a service of transportation; it would be difficult, if not impossiible, to separate the part of the service it is desired to designate as interchange switching from that which is admittedly a plant service. **Leetonia & Cherry Valley R. R.** In 1910 this road was incorporated, taking over the existing 4½ miles of yard tracks of the United Iron & Steel Co. at Leetonia, O. Capital stock to the extent of $14,000 was authorized, $1,400 of which was issued to the steel company. There are no bonds, but $51,017 is due the steel company on open account. The L. & C. V. Ry. subsequently constructed 1.60 miles additional track. All the tracks are located in and around the plant. The railway pays the industry for rental, equipment and right-of-way $6.000 per annum. The equipment consists of 2 locomotives, 6 cars owned by the railway, and 35 cars leased from the industry; total investment, $41,483. The tracks connect with the P. R. R. and the Erie R. R. The only outside shipper served is the France Slag Co., which buys its slag of the steel company. The service performed for the steel company is the switching of inbound and outbound cars between plant and trunk line connections. Ore and limestone are switched from interchange point to point of unloading; coal from interchange point to coal bins; refuse, to the dumping point; pig iron, from cast house to iron yard, and thence to interchange point. In 1911 there were 666 cars handled for the slag company and 15,290 cars for the steel company. The charge for interchange switching is $2 per car, which is absorbed by the trunk lines.

The L. & V. R. R. is not a party to the per diem agreement, but subject to the usual demurrage rules. Before the L. & C. V. R. R. was organized a large amount of demurrage accrued against the industry, but since then no demurrage has accrued. **Cuyahoga Valley Ry. Co.** In 1906 this railroad was incorporated by the Cleveland Furnace Co., and its plant railway tracks leased to it. Two years later the tracks were sold to the railway for $140,000, but the ownership of the right-of-way retained and leased to the railway for $10,620 per year. The tracks extend from connection with the B. & O. R. R. on the west side of the plant, across the tracks of the N. & S. S. R. R. and C. B. & T. R. R., through the plant enclosure, to connection with the W. & L. E. R. R. at the northern boundary. There are 14 miles of trackage, 4 locomotives, 12 flat cars and 30 ore dumps. The only industries served, aside from the Cleveland Furnace Co., are a solvay company and a sand plant, both on the premises of the furnace company, by which their output is used. The C. V. Ry. performs all switching between the three plants and switches the finished product from the grading yard of the company to trunk line connections. In 1911, of all cars handled, 93.9 per cent were for the furnace company, 1.3 per cent for the solvay company, and 4.8 per cent for the sand plant. The C. V. Ry. performs internal switching for the furnace company, chiefly in movement of hot metal from furnace to pigging machines, which, owing to regularity of service required, could not be done by the trunk lines. The C. V. Ry. charges $2.50 per car for all switching movements, including internal switching, except that $1 per ladle is charged for the movement of hot metal. It issues bills of lading for shipments destined for Cleveland, but on interchange business involving a line haul its bill of lading is taken up and that of the trunk line substituted. It is not a member of the per diem association, but pays the regular per diem rate for any time over 4 days in handling loaded cars. No reclaim is allowed for time not taken. Demurrage charges on a car accrue only during the time the car is in possession of the furnace company. **River Terminal Railway.** Here is a furnace company, a dock company, and an industrial railway company, separately incorporated, but owned in the same interest and being one investment. The River Furnace Company of Cleveland, O., the R. T. R. R. Co. and the River Dock Co. were separately incorporated. At the time of incorporation the former leased the tracks of the furnace company, 6.30 miles, at a rental of $5,000 per year, the R. T. Ry. to perform all internal switching for the furnace company without charge. The equipment, owned by the railway, consists of 3 locomotives and 6 gondolas. The trunk line connections are the B. & O. R. R. and the W. & L. E. R. R. The tracks of the latter originally extended through the middle of the furnace company property, and were relocated at the expense of the furnace company. The furnace company and the dock company are the only industries served by the R. T. Ry. It performs all interchange switching, switches cars between the dock and the trunk lines, and performs all internal switching for the furnace company. It is accorded an allowance of 10c out of the rates of the B. & O. R. R. and $2.50 per car by the W. & L. E. R. R. The P. R. R., the N. Y. C. lines, the Lake Shore R. R. and the Big Four have refused allowances, but the Erie R. R. allows $2.50 per car. The dock company also receives 2c a ton when ore moves without being unloaded on the dock, otherwise 10c. The R. T. Ry. issues no bills of lading, bills of lading being made out by the furnace company and the dock company for their respective shipments, and signed by the trunk lines. It is not a member of the per diem agreement. The furnace company pays demurrage to the trunk lines under the average rule. **Upson Nut Company.** The plant of this company, on the Cuyahoga River at Cleveland, O., covering 25 acres, is bounded on the north and east by the tracks of the Big Four, on the south by the Erie R. R. and on the west by the river. It has 4½ miles of track within the plant enclosure, which it operates with 4 locomotives, 6 gondolas, 6 hot-metal ladles, 51 ingot buggies and 42 scrap buggies. All switching, internal and interchange, at two of its departments, is done with the power of the industry, while at a third department it is performed by the trunk lines. For the movement of interchange traffic the industry uses the tracks of the Erie R. R., 1,218 feet in length. No allowances are received from the W. & L. E. R. R. The Erie R. R. one-third of the cost of switching, the rest being pro-

rated between the companies on the basis of the number of cars handled for each. **Etna & Montrose R. R.** The Carnegie Steel Co. has a plant at Etna, Pa., known as the Isabella Furnace. At this plant it had a system of tracks which were in 1896 turned over to the newly incorporated E. & M. R. R. Co., the latter taking over in exchange for its total capital stock of $60,000, 2.52 miles of track, surrounding the plant, thus rendering it impossible for the trunk lines to reach the plant except over its lines. The total trackage is 9.12 miles, of which 6.60 miles are leased from the steel company. The equipment, also leased from the steel company, consists in 5 locomotives and 14 cars. The B. & O. R. R. and the P. R. R. both adjoin the property line of the industry The E. & M. R. R. performs all interchange and interworks service and operates all tracks in and around the furnace. No traffic is handled for other industries or shipper. The E. & M. R. R. receives allowances of $2.25 per car on ore, $1.75 on coke, and $1.60 on lime stone. No allowance is made on outbound traffic. Cars are interchanged under the demurrage rules. **Pittsburgh, Allegheny & McKee's Rocks R. R.** The Pressed Steel Car Co. operates two plants, one at Allegheny, Pa., covering 16 acres, and the other, on the opposite bank of the Ohio River at McKee's Rocks, covering 46 acres. The car company also controls the Pennsylvania Malleable Co. and the Central Car Wheel Co. located in the vicinity. In 1899 the P. A. & McK. R. R. was incorporated with a capital stock of $250,000, and the plant railways of the car company transferred to it in exchange for its capital stock. The railway consists of two divisions having no physical connection, a part of the tracks being at each plant; the tracks at the McKee's Rocks plant aggregating 12.96 miles, and those at the Allegheny plant 3.81 miles. The equipment consists of 10 locomotives and 132 cars. The trunk line connections are the P. & L. E. R. R., P. C. & Y. R. R., P. R. R. and B. & O. R. R. The P & A. & McK. R. Ry. does all interchange and internal switching. It also performs a small part of the switching for the Malleable company and the wheel company, the trunk lines performing the major portion of their switching. It receives no allowances from connecting carriers, but the Wabash-Pittsburgh Terminal and the P. switching charges are absorbed by the & I. E. Ry. at McKee's Rocks, and the B. R. & P. R. R. at Allegheny. The P. & L. E. Ry. absorbs 60c per ton in addition to the switching charge of the industrial railway. The switching charges absorbed cover only 5 or 6 per cent of the interchange traffic. The P. A. & McK. R. Ry. operates a ferry boat service between the two plants, the traffic consisting of passengers (principally employes) and less-than-carload freight belonging to the industry. At McKee's Rocks the railroad is allowed 4½ days' reclaims, from 1904 to 1911 the excess of reclaims over per diem being $24,768; but at the Allegheny plant cars are interchanged under the demurrage rule and only 24 hours are allowed for return of car. **Pittsburgh & Ohio Valley R. R.** The plants served by this road consist of 2 blast furnaces, the Edith, located on the Ohio River at Allegheny, and the Neville Island, located on Neville Island several miles down the river. The P. & O. V. Ry. was incorporated in 1899 with an authorized capital of $500,000, of which $60,000 was issued to the American Steel & Wire Co. There is $100,000 due to the controlling interests. The road consists of two disconnected sets of tracks, about 5 miles apart. Total trackage, 12.78 miles, of which the Allegheny division has 1.18 miles, and the Neville Island division 11.60 miles. The Allegheny division is entirely owned by the wire company; the tracks of the Neville Island division are owned by the P. & O. V. R. R., but the right of way is leased from the wire company. The equipment consists of 6 locomotives and 1 car. The trunk line connections with the Allegheny division are the B. & O. R. R. and the P. R. R.; both immediately adjoining. The Neville Island division connects with the P. & L. E. R. R. and the P. R. R. via the P. C. & Y. R. R., owned jointly by the two trunk lines. But two other shippers are served by the P. & O. V. R. R. The general service performed is the switching of cars between trunk line connections and points of placement within the plants. The road receives allowances of $2.25 per car on ore, $1.75 on coke, and $1.60 on limestone. For switching other commodities the steel company is charged $1.50 per car; while for outside switching the charge is $3.00. The Neville Island division is a member of the per diem agreement, receiving 4 days' reclaim. The Allegheny division interchanges under the demurrage rule. In 1910

the per diem paid was $14,040, the reclaim received $14,335. **Elwood, Anderson & Lapelle R. R.** The plant of the American Sheet & Tin Plate Co. at Elmwood, Ind., is all enclosed by a fence, all the tracks within which were formerly owned and operated by the P. C. C. & St. L. R. Rs., by which all the plant switching was performed. In 1897 the industry purchased the tracks for $50,000, incorporated the E. A. & L. R. R., with a capital stock of $50,000, and transferred the tracks to the railroad company in exchange for its capital stock. There are 4.51 miles of track, all within the plant enclosure, except the track extending about 7,000 feet from the north end to connection with the N. Y. C. lines, through the actual track connection is only 300 feet from the plant. All the right of way within the enclosure, and most of that without, is leased of the industry, the lease providing that the E. A. & L. R. R. shall have the exclusive railroad right of entrance into and upon the grounds of the plant. The tracks of the P. R. R. extend along the property line of plant. The equipment of the E. A. & L. Ry. consists of 2 locomotives, 1 flat car and 2 coal cars. The principal service performed is interchange switching; it does only a small part of the intermill switching. Inbound shipments of raw material must be placed promptly when actually required to meet the needs of the industrial service, and the E. A. & L. Ry. adjusts its switching service to meet the demands of the plant. It charges $2 per car on inbound and $4 on outbound business, which are absorbed by the trunk lines. The charge for intermill switching is $2. On interchange the trunk lines charge demurrage against the industry. In 1911 the road handled 14,785 cars, from which it derived $20,201; $5,530 from the industry and $14,671 from the trunk lines. **Pencoyd & Philadelphia R. R.** This is the industrial railway of the American Bridge Co., whose plant is located at Philadelphia on either side of the Schuylkill River, the two departments being connected by a bridge. The total trackage of the railway is 3.15 miles, of which one-tenth of a mile, located on the bridge, is, together with the bridge, owned by the railway, and the remainder leased of the industry. The present value of the railroad and equipment is $66,102. Trunk line connections are the P. R. R. and the P. & R. Ry., either of which extends into the plant, though the P. & R. Ry. parallels the property lines of the industry. The industry also has a narrow gauge system used in interplant movements. There are no other industries served by the P. & R. Ry. It performs interchange and internal switching and spots all cars for the furnaces. In 1911 there were 603,000 tons interchanged with trunk lines and 800,000 tons handled in intermill switching. The P. & R. Ry. receives no allowances or reclams. **McKeesport Connectng Line.** The National Tube Co., a subsidiary of the U. S. Steel Corporation, operates a plant at McKeesport, Pa. The plant, as well as the McK. C. L. Ry., are within a fenced enclosure of about 100 acres, which lies between the P. L. R. R. and the harbor line. The entire capital stock of the Mc.K. C. L. Ry., $1,000,000, is held by the tube company. It operates 19.30 miles of tracks. of which 11.87 are owned and 7.43 leased from the tube company for $1 per annum. The industry also operates a narrow-gauge road as a plant facility. Equipment of the McK. C. L. Ry. consists of 15 locomotives and 186 cars. Its tracks connect with the P. R. R., the B. & O. R. R., and the P. & L. E. R. R. The first two lines formerly entered the plant, but are now excluded, except over the rails of the McK. C. L. Ry. The only other industries served by the latter are the American Sheet & Tin Plate Co., a subsidiary of the U. S. Steel Corporation, and the Keystone Sand Supply Co., a contributary facility of the tube company. The general character of service performed by the McK. C. L. Ry. are interchange and internal switching, 47 and 53 per cent, respectively. The storage capacity of the tube company being small, it is necessary to spot the cars at the consuming bins. Allowances are received from the trunk lines of $2.25 per car on ore, $1.75 on coke and $1.60 on limestone. On all other switching for the tube company a charge of $1.50 is made, except that on outbound tubes the charge is $2.50 per car. The McK. C. L. Ry. does not issue bills of lading or waybills. It is a member of the per diem agreement and in 1911 the reclaims exceeded the total per diem payments by $14,971. **St. Clair Terminal.** This road is located at the plant of the Clairton Steel Co., at Clairton, Pa., now leased by the Carnegie Steel Co. It owns 8.40 miles of track and leases 15.43 miles from the Carnegie Steel Co. Equipment consists

of 8 locomotives and 123 freight cars. The St. C. T. Ry. also owns a bridge across the Monongahela which is designed to carry a street railway above the steam railroad tracks. The trunk line connections are the P. R. R., the P. & L. E. R. R. and the W. S. B. Ry. The main line of the P. R. R. still remains inside the plant. The total investment of the St. C. T. approximates $1,800,000. The steel company also owns and operates a narrow-gauge system within the plant. The general service of the St. C. T. Ry. consists in interchange switching, and it also performs a part of the plant switching. The interchange switching of raw materials requires movements every few hours and must be done with the utmost promptness. Practically all ore comes from the Conneaut dock via the P. & L. E. R. R., U. R. R. and W. S. B. Ry., on which the 96c rate is divided 16.8c to the St. C. T. Ry. The latter road receives the usual per car allowances from the P. R. R. and the P. & L. E., but the W. S. B. Ry. makes allowances of 10c per ton. The P. & L. E. Ry. pays in addition the estimated cost of operating one engine. No service is performed for other than the controlling interest. The St. C. T. Ry. does not issue bills of lading. Cars are interchanged under the demurrage rules. **North Buffalo R. R.** The plant of the Wickwire Steel Co., on the Niagara River, near Harriet, N. Y., covers 70 acres. The road has 4.76 miles of yard tracks and sidings in and about the plant, equipped with 5 locomotives and 7 cars. Tracks and equipment are leased from the steel company for $10,000 per annum. Total investment $129,430. The N. Y. C. Ry. has built a track from its yard at Harriet to the plant, which is used by the N. B. R. R. free of rental. By means of their spur the N. B. R. R. also connects with the D. L. & W. R. R. and the L. V. R. R. The service performed by the N. B. R. R. consists of interchange switching with the trunk lines at Harriet, internal switching and filling the lands of the Womalancet Land Co. with slag from the furnaces of the steel company, for which it is paid by the latter. No allowances are accorded the N. B. R. R., but it charges the industry $2.50 per car on traffic that bears a rate of 50c or more for the trunk line haul, and 75c per car on other traffic, including the internal switching. HELD, that in the foregoing instances all the service by the line carriers beyond a reasonably convenient point of interchange between the rails of the carrier and the rails of the industry, either within or without the plant, is a shipper's service, and not a service of transportation which the line carrier may perform without charge, or may allow for out of the rate through divisions or otherwise when performed by the industry or by its industrial railroad, and that the facilities used by the industry in performing the service, whether separately incorporated or not, are plant facilities and plant equipment; that the delivery of a car by a line carrier upon the exchange track is a delivery to the industry and that the elimination of demurrage as a transportation charge against the industry is unlawful, and gives the industry so favored an undue and unreasonable preference and advantage; that undue and unlawful preferences and discriminations arise out of the present practice of the line carriers in performing such services without additional charge, and in making allowances therefor out of the rate when performed by the industry or its plant railway; that the line carriers are not compensated for such services in their rates, ad that the allowances therefor out of the rates are unlawful rebates paid for the traffic and when performed by the line carriers are unlawful rebates in service, paid for a like purpose. Industrial Railways Case, 29 I. C. C. 218.

(i) The C. & S. E. R. R., which is a plant facility of the Victor-American mines, operates by trackage agreement over lines of other carriers. The inclusion of the mines of the C. & S. E. R. R. in the ratings of the D. & R. G. and C. & S. R. Rs. works an undue discrimination. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502. 507.

(jk) If an allowance out of the through rate is to be made to the Birmingham Southern Railroad (a terminal railroad serving certain industries), and this is given under Section 15 of the act, the same treatment should be accorded to the other industrial roads in the same district, none of which is incorporated as a common carrier, or reports to the Commission, etc. But if this allowance is to be made to the Birmingham Southern as a common carrier, it could not be made to the other roads until they have placed themselves under the act and assumed all the burdens and responsibilities of com-

mon carriers. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 119.

(l) In arriving at divisions on L. C. L. traffic to be paid to the industrial road out of through rates, the carriers should make such adjustments as the division of 6.5 cents per ton on carload traffic, fixed by the Commission, may suggest. The carriers should maintain a proper relationship between carload and less-than-carload rates. Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 123.

(m) The real question at issue in determining whether an industrial or tap-line road may be given divisions in the joint through rates, switching and demurrage allowances, etc., is as to the character of the road itself; whether it is merely a plant facility or a common carrier, with rights and obligations as such. Industrial Railways Case, 32 I. C. C. 129, 130.

(n) What is said by the Commission in the Industrial Railways Case, 32 I. C. C. 129, relative to the establishment of allowances or divisions with industrial roads is not to be understood as a finding by the Commission that those industrial roads can enter into such relations with trunk-line carriers without transgressing the commodities clause of the act. Industrial Railways Case, 32 I. C. C. 129, 133.

(o) Trunk line roads may, under the rulings of the Commission, re-establish allowances, divisions, demurrage or per diem arrangements with industrial roads only in instances in which the transaction is bona fide, each case to be judged by its own facts and merits. Industrial Railways Case, 32 I. C. C. 129, 133.

(p) Any division out of through lumber rate on account of log haul cannot be sanctioned. Rates on Sugar, 31 I. C. C. 490, 493.

(q) Where a haul over two or more tap lines is involved, divisions herein fixed should be applied to aggregate haul and not to separate service of each of tap lines. 31 I. C. C. 490, 493.

§9. Right to Allowances.

See Allowances.

(a) Tap lines connecting timber districts and lumber mills with trunk lines are common carriers of proprietary as well as non-proprietary lumber, and as such entitled to participate in joint rates, where the fact that the tap lines are owned by the persons who also own the timber and mills which they principally serve is not shown to be inconsistent with the laws of the state in which they are organized and operated, lumber being excepted from the "commodities" clause. United States v. L. & P. Ry. Co., 34 Sup. Ct. 741, 748; 234 U. S. 1, 58 L. ed. —.

(b) Lumber being excepted from the "commodities" clause, it was HELD, affirming the decision of the Commerce Court in 209 Fed. 260, reversing 23 I. C. C. 277, 549, that a "tap line" railroad is entitled to the same allowance from a trunk line out of the joint through rate for logs and lumber offered the tap line by its proprietary company as it receives out of the rate for non-proprietary logs and lumber. United States v. Butler County R. R. Co., 34 Sup. Ct. 748, 760; 234 U. S. 29, 58 L. ed. —.

(c) No service can lawfully be required of a line carrier beyond the point of interchange with an industry, and therefore a line carrier cannot be required to make an allowance to the industry out of the rates, for doing the service for itself with its own facilities. Industrial Railways Case, 29 I. C. C. 212, 230.

(d) The privileges and advantages now enjoyed by a relatively small number of extensive industrial establishments, must either be held to be an unlawful concession to them by the carriers, or, if lawful, the principles upon which they may be justified must be ascertained and clearly defined, so that like privileges and advantages may be claimed by all industrial establishments served, whether large or small. Industrial Railways Case, 29 I. C. C. 212, 217.

(e) The allowances and free services accorded by line carriers to industrial railways were never taken into consideration by the former in fixing the rate, but in effect are concessions from the rate. Industrial Railways Case, 29 I. C. C. 212, 216

(f) Common carrier, formerly considered an industrial line, should collect its charges from former owning industry the same as it does from other shippers. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93. 102.

(g) The Commission does not condemn the payment by the trunk lines to the Manufacturers' Railway Co. (the latter serving certain industries at St. Louis as a terminal line) of reasonable allowances or divisions out of a through rate. Neither does the Commission disapprove of the trunk lines participating with the terminal line in the establishment and maintenance of joint rates not higher than the joint rates of the trunk lines to and from St. Louis. This is conditioned upon the proviso that the allowance or division given the terminal road shall not be excessive. Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 103.

(h) The Commission considered a modification of the original report in this case, 29 I. C. C. 212, wherein the Commission held that allowances to or divisions of rate with any of the so-called industrial roads were unlawful. No distinction was made between the industrial roads, although their physical characteristics and the conditions surrounding them varied widely. As a result of that report, although no order was entered, the line haul carriers promptly withdrew all allowances, divisions and demurrage and per diem arrangements with the industrial roads. After the original report was issued the Supreme Court handed down its decision in the Tap Line cases, 234 U. S. 1. The Commission's report in those cases held that the tap lines were plant facilities and the service performed for the proprietary lumber companies was not a service of transportation by a common carrier, but a plant service by a plant facility; that allowances and divisions of rates on that account were unlawful and resulted in undue and unreasonable preferences and unjust discriminations. The defendant trunk lines were ordered to cease and desist from making such allowances, etc. The Supreme Court held that the real question to be decided is the true character of the roads involved. Are they plant facilities merely or common carriers with rights and obligations as such? The court held that the conclusion that the roads are not common carriers because most of their traffic is their own logs and lumber and only a small part of the traffic carried is the property of others, is incorrect; that the extent to which a road is in fact used does not determine the fact whether it is or is not a common carrier; that it is the right of the public to use the road's facilities and to demand service of it, rather than the extent of its business which is the real criterion determinative of its character. The court held that the roads are common carriers by the test of their organization for that purpose under competent legislation of the state; that they are so treated by the public authorities of the state; that they are engaged in carrying for hire the goods of those who see fit to employ them; that they are authorized to exercise the right of eminent domain by the state of their incorporation; and that they were treated and dealt with as common carriers by connecting carriers, a circumstance to be noted in determining their true character. The court pointed out that because the conclusion was reached that the tap lines are common carriers of both proprietary and nonproprietary traffic, and therefore entitled to participate in joint rates, it does not follow that divisions may be made with connecting carriers at the will of the carrier and without power of the Commission control the same; that it is not only within the power of the Commission but the law makes it the Commission's duty to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear; that if the divisions of the joint rates are such as to result in discriminations or rebates in favor of the owners of the tap lines, because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount, so that a tap line shall receive just compensation only for what it does. In this case the fundamental principles are the same as in the Tap Line cases, except for a possible distinction as to application of the commodities clause, but that cannot affect the conclusions or action of the Commission. If the commodities clause is violated, that infraction of law is not to be corrected or punished by rate adjustment. The records in the Tap Line cases and in this case demonstrate that the granting of allowances to industrial roads owned in whole or in part by the principal or sole industries served by such roads has been carried to indefensible extremes and has resulted in many grossly discriminatory practices. Many of these abuses were eliminated as a result of the Commission's investigation. Since the Supreme Court decided the Tap Line cases, the Commission has given effect

to the court's decision by fixing maximum divisions of rates or switching allowances which the tap line roads may receive from the trunk line carriers. Similar action has been taken in the Birmingham Southern case, 32 I. C. C. 110 and the Manufacturers Ry. case, 32 I. C. C. 100. The general Electric Co. case, and Solvay Process Co. Case, 14 I. C. C. 237 and 246 and the Crane Iron Works Case, 17 I. C. C. 514, were decided upon facts, circumstances and conditions appearing in each. But those cases differed from the Tap Line cases and the present case, in that in each of the former cases the industrial railway, or the industrial corporation owning it, sought to have the Commission require the trunk line to accord the industrial road allowances or divisions which the trunk lines were unwilling to accord and which they claimed were unlawful. In the present case the withdrawal of allowances to many of the industrial roads, in accordance with the Commission's original report, seems to have been accepted as proper without much question. But as to a few of them there is insistence that the findings of the Commission invade the legal rights of the industrial roads, and the Commission is urged to issue an order, so that the question may be tested in the courts. The Commission concludes, however, that its duty is to refrain from issuing an order and to avoid the delay that would be attendant upon such litigation. In the light of the decision of the Supreme Court in the Tap Line cases, the Commission feels that it should so modify its findings in the original report herein as to permit the trunk line roads, if they so elect, to arrange by agreement with any of the industrial roads which are common carriers under the test applied by the Supreme Court in the Tap Line cases, and which perform a service of transportation for a reasonable compensation for such service in the form of switching charges or divisions of joint rates. Each road will be expected to file with the Commission immediately a full statement of the arrangement entered into; and the Commission will undertake to inquire into any of these allowances or divisions which may seem to be unwarranted or unreasonable or to effect unjust discrimination. What the Commission herein says as to the establishment of these allowances, etc., must not be understood as a finding by the Commission that the industrial roads in question can resume these relations with the trunk line carriers without transgressing the provisions of the commodities clause of the Act. The trunk line roads will be expected, under the modifications made herein in the original findings, to re-establish allowances, divisions or demurrage or per diem arrangements with industrial roads only in instances in which the transaction is bona fide and in which it is clearly lawful and proper. Industrial Railways Case, 32 I. C. C. 129.

III. THROUGH ROUTES AND JOINT RATES

See Through Routes and Joint Rates.

§10. Right to in General.

(a) Complainants sought the establishment of through routes and joint rates on bituminous coal from points on the line of the Campbell's Creek Railroad, W. Va., to points on the lines and branches of the Kanawha & Michigan Ry., and on the line of the Kanawha & West Virgina Ry. The C. C. Ry. is a line 13 miles long, running from Putney to Dana, W. Va., a point 5 miles south of Charleston on the main line of the K. & M. R. R. Besides the C. C. Ry., two other lines, the Kanawha and West Virgina R. R., a line 22 miles, and the Coal & Coke R. R., a line which with its branches covered about 198 miles, joined the K. & M. R. R. main line in the vicinity of Charleston. But though of greater length, it appeared that these lines, as well as the C. C. Ry., were each intimately connected with a mining company by means of interlocking directorates, and were largely engaged in the transportation of coal for such companies. The stock of the C. C. Ry. was at first owned by the Campbell's Creek Coal Co., and subsequently it was distributed among the stockholders of the coal company, so that both companies were owned by the same persons; the two companies occupied rooms in the same suite of offices; the railway company was permitted to use the property of the coal company without paying for it, and the coal company made loans to the railway company without any due date being fixed. Shippers on the C. C. Ry. were compelled to pay the local rate of 15c per ton on the C. C. Ry. to Dana, plus the main-line or Kanawha Coal district rates to points of destination, while shippers on the K. & W. Va. Ry., and on the C. C. Ry. and its branches, distant 34 to 172 miles

from the main line, shipped from their local points at the main-line rate. The K. & M. R. R. also maintained the main-line rate from a point on its own four-mile branch. Complainants urged that the existing rates from points on the C. C. Ry. were unreasonable and discriminatory as compared with the rates accorded shippers on the K. & W. Va. R. R. and C. C. Ry. Besides coal brought by the three short lines in question, the K. & M. R. R. was the recipient of coal from a number of mines adjacent to its main line, the coal being transported to the main line at the shipper's expense in a variety of ways: by motor and rope haul, as well as by steam power, and over narrow gauge, as well as standard gauge tracks, over distances varying from a mile to 6 miles. In some cases there was no physical connection with the K. & M. R. R., the coal being dumped from tipples into the cars on the main line, while in other cases transportation was by standard-gauge lines owned and operated by the mining companies, the coal being loaded into cars furnished by the K. & M. R. R. Some of these lines hauled some freight for outside shippers. Two-thirds of the Campbell's Creek mine output was transported over the C. C. Ry. in its cars to its tipple on the Kanawha River, where it was loaded on barges for transportation to Cincinnati. The remainder of the output was transported from the mine to the K. & M. R. R. on cars furnished free by the K. & M. R. R., the C. C. Ry. contending that under section 1 of the Commerce Act it was, as a lateral branch line, entitled to connection with the trunk line, which was under obligation to furnish cars. HELD, that while the maintenance by defendants of the main-line rates from points on branches of the K. & M. Ry., while denying them to complainants, did not constitute undue prejudice, the maintenance of such rates from points on the Kanawha & West Virginia and the Coal & Coke railroads was unduly prejudicial, and even though all of these carriers violated the commodities clause, such violation would constitute no justification for such discrimination in rates. The discrimination should be eliminated either by canceling the main-line rate to points on the roads last named, or by establishing these rates as joint rates with the C. C. Ry. On through route shipments the C. C. Ry. is under joint obligation to furnish cars. Reparation denied. Campbell's Creek Coal Co. v. A. A. Ry. Co., 29 I. C. C. 682.

IV. TARIFFS AND PUBLICATION.

See Tariffs.

§11. In General.

(a) Every carrier that becomes party to an agreement as to divisions between trunk line carriers and tap lines or industrial roads must file with the Commission a full statement of the arrangement entered into, showing specifically the allowances or divisions granted thereby. Industrial Railways Case 129, 32 I. C. C. 132.

V. PROCEDURE AND PLEADING.

See Procedure Before Commission.

§13. In General.

(a) An order of the Commission directing the discontinuance of certain allowances by a trunk line to a tap line serving proprietary plants will be reviewed upon the petition of the tap line, though not the party against whom the order was directed, since the tap line is directly and financially interested by the order. L. & P. Ry. Co. v. United States, 209 Fed. 244, 251; affirmed, 234 U. S. 1; 34 Sup Ct. 741; 58 L. ed.

(b) Where the Commission has, upon a full and fair hearing, found that a tap railroad, while an interstate carrier as to other shippers, is a mere plant facility as to a proprietary company, the Commission's findings are subject to review in a court only upon allegation that they are not sustained by any substantial evidence in the record, or are arbitrary in being based upon improper distinctions and considerations. L. & P. Ry. Co. v. United States, 209 Fed. 244, 250; affirmed, 234 U. S. 1; 34 Sup. Ct. 741; 58 L. ed.

(c) The Commission cannot be charged with such arbitrary action as would justify an annulment of its orders in respect to tap lines petitioning for joint rates on lumber from prorietary mills, merely because of a different finding as to other tap lines, whose history, physical conditions, and relat'ons to and service for proprietary companies are in some respects like those of the petitioning tap lines. L. & P. Ry. Co. v. United States, 209 Fed. 244, 250; affirmed, 234 U. S. 1; 34 Sup. Ct. 741; 58 L. ed.

TARIFFS.

I. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

§2. Power of Congress.
II. PUBLICATION.
§3. Effect in general.
(1) Adherence to published rate.
(2) Erroneous quotation by carrier.
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III. POSTING.
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§8. Ambiguity.
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§16. Shipments in bulk.
§17. State rates.
§18. What is legal rate.
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CROSS REFERENCES

See Claims, I; Classification; Commodity Rates, §2; Demurrage, III; Export Rates and Facilities, IV; Express Companies, VI; Facilities and Privileges, III; Interstate Commerce Commission, §2 (I); Loss and Damage, §5½ (a), §5 (c), (d), §9 (g), §13¾ (i), §17 (a); Proportional Rates, §6; Reconsignment, IV; Reduced Rates, III; Refrigeration, IV; Storage, III; Switch Tracks and Switching, §10; Tap Lines, IV; Terminal Facilities, §4; Through Routes and Joint Rates, V; Track Storage, III; Water Carriers, III; Weights and Weighing, VI.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Courts, §11 (e), (i); Interstate Commerce Commission, I.

(a) The Commission should not be expected in every case to check superseding issues of all tariffs to determine whether, by any possible construction, a rate may be increased via a possible route over which there may or may not ever have been any movement. New England and Canadian High Explosive Rates, 29 I. C. C. 697, 698.

(b) As a matter of practice, the Canadian Board in the past has dealt with international joint tariffs having regard to the outward movement only, and, speaking generally, has not interfered in any way with any tariff properly filed under American practice applying to the joint movement into Canada. The result is that a situation which otherwise might have presented difficulties has worked out along satisfactory lines and without friction. (Can. Ry. Comm., 1914.) The Essex Terminal Ry., File No. 24129.

(c) The Commission is empowered to strike a tariff from its files if filed as part of a scheme by shippers to secure unlawful allowances from carriers under pretense of common carriage. A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92.

II. PUBLICATION.

§3. Effect in General.

See Facilities and Privileges, §6 (c).

(a) It is fundamental that the publication of rates should be simplified in every way possible; but the fact that a rate is difficult to compute can have no weight in determining whether or not it is reasonable in amount. Montrose & Delta Counties Frt. Rate Asso. v. D. & R. G. R. R., 34 I. C. C. 393, 399.

(b) Schedules of fares and charges and the regulations filed with the Interstate Commerce Commission by a carrier pursuant to the provisions of the Hepburn Act are controlling between carrier and shipper. Ford v. C. R. I. & P. Ry. Co. (Minn., 1913), 143 N. W. 249.

(c) Rates fixed by a carrier and filed with the Interstate Commerce Commission are absolutely binding upon all parties, including other carriers over whose lines the traffic passes. Crane R. Co. v. Central R. Co. of New Jersey, (Pa. 1915), 93 Atl., 1076, 1078.

§3 (1) Adherence to Published Rate.

See Legal Rate; Notice; Through Routes and Joint Rates, §22.

(a) The provision of section 6 of the

Interstate Commerce Act, forbidding carriers to extend to persons any privileges or facilities save such as are specified in the tariffs, relates solely to the transportation of persons and property, and bears upon the transportation rates and charges. It does not cover privileges and advantages extended to the consignee by the carrier after the termination of the journey, or after the arrival of freight at its destination, for reconsignment. United States v. Erie R. R. Co., 209 Fed. 283, 286.

(b) The carrier cannot, by any act, estop itself from claiming the lawful freight rate, since under the Commerce Act, as amended by U. S. Compiled Statutes, 1901, p. 3155, U. S. Comp. Stat., Sup. 1909, p. 1153, and U. S. Comp Stat., Sup. 1911, p. 1309, the rate the carrier is entitled to and must collect on every shipment is measured, not by the rates which may have been named in the bills of lading or contracts of shipment, but by the lawful rate obtaining at the time, and this is true regardless of whether the consignor or consignee knew or not, at the time of shipment, of the lawful rate, and regardless of whether he may or may not have been then misled to his hurt by the carrier as to the lawful rate, and regardless of whether the carriers kept or not, posted in its stations and open for public inspection, the lawful rate. C. of G. Ry. Co. v. Birmingham Sand & Brick Co. (Ala., 1913), 64 So. 202, 204.

(c) The rate prescribed by the Commission on interstate shipments controls and it is the duty of the carrier to collect the same. T. & P. Ry. Co. v. Dickson Bros. (Tex. Civ. App., 1914), 167 S. W. 33.

(d) Where a contract for a rate less than the lawful rate filed with the Commission is made between the agent of a railroad company and a shipper over that railroad and its connections, represented by the agent, and the full lawful rate is collected, and a claim for the difference between the lawful and the contract rate is made by the shipper and allowed through error by the railroad company, and suit is filed by it to recover the amount so improperly refunded, the shipper cannot offset the plaintiff's demand with a claim for damages on account of the breach of the illegal contract for the lesser rate. The contract being void, such damages cannot be offset or collected. C. of G. Ry. Co. v. Curtis (Ga. App. 1914) 92 S. E. 318.

(e) Where a freight rate has been put in force in accordance with the provisions of the Interstate Commerce Act, it is conclusive on carrier and shipper, and no valid contract for a lower rate can be made; but where a carrier has established no rate a contract between the parties is binding. Mott Store Co. v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 322.

(f) That under the Interstate Commerce Act a positive duty is imposed upon the carrier to collect, and upon the shipper to pay, the lawful tariff rate. Southern Pacific Co. v. Frye & Bruhn (Wash., 1914), 143 Pac. 163, 164.

(g) The filed an published rate, as to an interstate shipment, whatever the combination may be, is conclusive. Wichita & W. Ry. Co. of Tex. v. Asher (Tex., 1915), 171 S. W. 1114, 1120.

(h) Law imposes upon shipper duty of ascertaining rates and conditions under which he ships; and upon carriers the duty of collecting, receiving and retaining charges based on lawfully published and filed tariff rates. Rosenheimer Malt & Grain Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-808.

(i) The filed and published rate, as to an interstate shipment, whatever the combination may be, is conclusive. Wichita & W. Ry. Co. of Tex. v. Asher (Tex. 1915), 171 S. W. 1114, 1120.

(j) It appears then, that "publication" means "promulgation and distribution," and is not confined to the mere filing of the schedule with the Commission; it being something besides that or in addition to it. Virginia-Carolina Peanut Co. v. A. C. R. Co. (N. C. 1914), 82 S. E. 1, 4.

(k) Under the Act to regulate commerce, a positive duty is imposed upon the carrier to collect, and upon the shipper to pay, the lawful tariff rate. Southern Pacific Co. v. Frye & Bruhn, 143 Pac. 163, 164.

(l) No tariff is self-operative to the effectual prevention of the possibility of fraud. Carriers must take the necessary precautions to preserve the integrity of published rates. Louisiana Sugar Planters' Asso. v. I. C. R. R., 34 I. C. C., 253, 254.

(m) Where a carrier's agent through error advises a shipper that reconsignment may be made at the lowest rate between point of origin and final destination, though this may not be done under the tariff in effect, at the time, the cases does not differ materially from one involving merely a misquoted rate. Reeves Coal Co. v. C. M. & St. P. Ry., 34 I. C. C., 122, 123.

(n) It is the duty of the carrier to collect the lawfully published rate whether less or more than the rate erroneously applied. Goldfield Cases, 34 I. C. C. 360, 378.

§3. (2) Erroneous Quotations by Carrier.

See Erroneous Rate.

(a) There being no posted schedule of tariffs at the railroad station from which plaintiffs desired to ship consignment of flour, they applied to the proper railroad official, not with a view to bargaining for a reduced rate, but to ascertain the rate prescribed. They were given a rate which subsequently proved to be less than that prescribed, and acting upon the representation of the officer, continued their shipments for two years, supposing the rate which they paid to be the legal rate. Upon the error being discovered, they were asked to make good the difference on all their shipments. HELD, that in such a case equitable principles can play no part, in view of the public interests involved and the rigid requirements of the Interstate Commerce Act. Judgment for the carrier affirmed. Central Ry. Co. of N. J. v. Maurer (Pa., 1913), 88 Atl. 791, 793.

(b) A mistake by a carrier in responding to an inquiry by a shipper, either as to the rate or as to the route, will relieve neither the one nor the other from the obligation of fulfilling the law's requirements. In either event the carrier must collect and the shipper must pay the rate as published for the route over which the shipments actually move. A schedule of rates published in the manner provided by law speaks with equal authority to the shipper and the carrier and both are equally chargeable with notice of the rate and of the route over which the rate is applicable. C. of G. Ry. Co. v. Curtis (Ga. App. 1914) 82 S. E. 318.

(c) The misquotation of a rate or other provision of a tariff by the carrier's agent is not a basis for the assessment of a lower charge than that applicable under the published tariffs, or for an order of reparation. Wolverton v. U. P. R. R. Co., 31 I. C. C. 23, 24.

(d) That although an erroneous quotation or misstatement of a rate is made by an agent or officer of a carrier, the published rate on file with the Interstate Commerce Commission is the only lawful rate, and must be paid by the shipper and collected by the carrier. Southern Pac. Co. v. Frye & Bruhn (Wash., 1914), 143 Pac. 163, 164.

(e) A carrier must require payment of the lawful or published rate even though its agent has misrepresented the rate and it has agreed to take the goods for shipment at a lower rate, the published rate being the only lawful one. Virginia-Carolina Peanut Co. v. A. C. R. Co. (N. C., 1914), 32 S. E. 1, 3.

(f) The negligence of an agent or clerk of a railroad company in giving false information relating to freight rates for interstate shipments will not afford a cause of action to the shipper for recovery of his ensuing damages. Sloop v. Delano (Mo., 1914), 170 S. W. 385, 386.

(g) It is also settled that a wrong quotation by a railway agent as to the freight rate applicable to an interstate shipment, of a lower rate than the one fixed by the published tariff, gives no right of action to a shipper who claims to have sustained injury on account of the misquoted rate. Gulf, Colorado & Santa Fe Railway Co. v. Hefley, 158 U. S. 98, 15 Sup. Ct. 802, 39 L. Ed. 910; Railway Co. v. Mugg, 202 U. S. 242, 26 Sup. Ct. 628, 50 L. Ed. 1011. And this is the rule though the tariff is not posted in the carrier's local station. Ill. Cent. Ry. v. Henderson Elevator Co., 226 U. S. 441, 33 Sup. Ct. 176, 57 L. Ed. 270; Kansas City Southern Railway Co. v. Albers Com. Co., 223, U. S. 573, 32 Sup. Ct. 316, 56 L. Ed. 556. Wichita Fills & W. Ry. Co. of Tex. v. Asher (Tex., 1915), 171 S. W. 1114, 1116.

(h) It is well settled that the erroneous quotation of a rate or rating is no ground on which to base complaint of the unreasonableness thereof and that the shipper is charged with notice of the lawful tariff rate. Ochsenreiter v. A. T. & S. F. Ry. Co., 33 I. C. C. 518, 519.

(i) Carrier quoted a rate of 25c on staves from Ellsworth Falls, Me. to Shediac, N. B. A rate of 26 1-2c was charged. Lowest rate on file with Commission is 28 1-2c, making an undercharge of $9.41. HELD, not misrouting. Independent Cooperage Co. v. M. C. R. R. Co., Unrep. Op. A-891.

(j) A carrier must require payment of the lawful or published rate even though its agent had misrepresented the rate and it has agreed to take the goods for shipment at a lower rate; the published rate being the only lawful one. Virginia-Carolina Peanut Co. v. A. C. R. Co. (N. C.), 82 S. E. 1, 2, 3.

(k) It is also settled that wrong quotation by a railway agent as to the freight rate applicable to an interstate shipment, of a lower rate than that fixed by the published tariff, gives no right of action to a shipper who claims to have sustained injury on account of the misquoted rate. Gulf, Colorado & Santa Fe Railway Co. v. Hefley, 158 U. S. 98, 15 Sup. Ct. 802, 39 L. Ed. 910; Railway Co. v. Mugg, 202 U. S. 242, 26 Sup. Ct. 628, 50 L. Ed. 1011. And this is the rule, though the tariff is not posted in the carrier's local station. Ill. Cent. Ry. v. Henderson Elevator Co., 226 U. S. 441, 33 Sup. Ct. 176, 57 L. Ed. 270; Kansas City Southern Railway Co. v. Albers Com. Co., 223 U. S. 573, 32 Sup. Ct. 316, 56 L. Ed. 556. Wichita Falls & W. Ry. Co. of Tex. v. Asher (Tex. 1915), 171 S. W. 1114, 1116.

(l) Although an erroneous quotation or misstatement of a rate is made by an agent or officer of a carrier, the published rate on file with the Interstate Commerce Commission is the only lawful rate, and must be paid by the shipper and collected by the carrier. Southern Pac. Co. v. Frye & Bruhn, 143 Pac. 163, 164.

(m) While the shipper, or passenger, must take notice of the rates filed by the carrier and published, yet, until that is done, there is no rate; and hence there is not anything of which he could have notice. And the burden of proof is on the carrier—it is a part of the carrier's case—to show the filing and publication of the rate. The law will not presume notice when there is neither place, nor opportunity, where the information with which the party is sought to be charged can be had. Beaham v. N. Y. C. & H. R. R. Co. (Mo. 1915), 174 S. W. 150, 152.

§3 (3) Notice to shipper.

See Released Rates, §3½.

(a) Where there has been a departure from an established and published rate for the transportation of freight, it is never a question what the purpose back of it was, whether innocent or fraudulent, or whether occasioned by mutual mistake, or by the mistake of one party acted upon in good faith by the other. Both parties are alike charged with full knowledge of the prescribed rates; and if either comes short in this, it is his own fault through negligence, or wilful wrongdoing, and neither can excuse himself by showing reliance upon representations as to prescribed rates other than those appearing in the printed and published schedule. Central R. R. Co. of N. J. v. Maurer (Pa., 1913), 88 Atl. 791.

(b) Ignorance on the part of a shipper of tariff rates adopted by a carrier and duly filed with the Commission, does not relieve him of liability therefor. St. L. I. M. & S. Ry. Co. v. Faulkner (Ark., 1914), 164 S. W. 763.

(c) It is a good defense to an action in courts to recover back charges on interstate freight, in excess of those permitted by state statute and a contract between state and carriers, that they were collected according to rates lawfully filed and published according to the provisions of the Interstate Commerce Acts; it being settled by a long line of uniform decisions of the U. S. Supreme Court that, once schedules are filed and published, the sole remedy of the shipper is by complaint to the Commission. This jurisdiction cannot be infringed upon by previous contract of parties nor by state statutes; both of which must yield to the power of Congress to act upon the subject. E. D. Clough & Co. v. B. & H. R. R. (N. H., 1914), 90 Atl. 863, 865.

(d) The shipper, as well as the carrier, is bound to take notice of filed tariff rates, and that so long as they remain in effect they are conclusive as to the rights of the parties. C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318.

(e) Two carriers filed and published tariffs under the Act making two rates on household goods, one of which was based on a declared valuation and limitation of liability in case of loss, and the other showed a higher

rate where no valuation was declared or limitation prescribed. A shipper of household goods testified that upon inquiry the agent of one of the carriers quoted a rate to him without explaining that two rates were in existence, and also that when the contract of shipment was signed and the freight paid, the agent endorsed on it the valuation of the property and limitation of liability in case of loss, and that he objected to the limitation, but did not offer to pay the higher rate, nor ask to have the goods withheld from transportation. HELD, that the filing and publication of the rates afforded the shipper notice of the existence of the two rates, and he was presumed to have known of the limitation in value and of liability in the rate under which the shipment was made and the freight paid, and this rate determined the liability of the carrier in an action brought for the loss of the goods. Christl v. M. P. Ry. Co. (Kans. 1914), 141 Pac. 587.

(f) The defendant was entitled to prove that it had filed its schedule of rates, rules and regulations with the Interstate Commerce Commission, that they were published and kept posted as required by the Interstate Commerce Law, with the result that the shipper was bound to know their contents, and cannot plead ignorance on that point. Zoller Hop Co. v. So. Pac. Co., 143 Pac., 931, 934, 935.

(g) Under the Interstate Commerce act, the rate for either freight or passengers under the tariff of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext. Shippers and travelers are charged with notice of it, and they as well as the carrier must abide by it, unless it is found by the Commission to be unreasonable. Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed. This rule is undeniably strict, and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination. L. & N. R. R. Co. v. Maxwell, 35 Sup. Ct., 494, 495; 237 U. S. 94, 59 L. ed.

(h) Rates should be published in such a way as to apprise shippers of their existence. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 254.

§4. Necessity of Publication.

See Facilities and Privileges, §17; Reconsignment, §4; Refrigeration, §5.

(a) Rates should be published in such way as to apprise shippers of their existence. A low combination rate obviously is of no value to a shipper if he does not know that it exists, or if, knowing of its existence, he is unable to ascertain its amount. It is suggested that difficulties experienced by shippers in this respect would be removed if such combinations were published as through rates. Chamber of Commerce, Houston. Texas v. I. & G. N. Ry. Co., 32 I. C. C. 247, 255.

(b) Where provisions are eliminated from one tariff in anticipation of publishing them in another, the two tariffs should be amended simultaneously. Western Trunk Line Rules, 34 I. C. C. 554, 580.

(c) An interstate common carrier is required to file with the Commission a schedule of its rates. Crane R. Co. v. Central R. Co. of New Jersey, (Pa. 1915), 93, Atl. 1076, 1077.

(d) By the terms of the Act interstate commerce cannot be transacted by common carriers unless they first file their schedules, rules and regulations, after which neither they nor their patrons can deviate from them. Zoller Hop Co. v. So. Pac. Ry. Co., 143 Pac., 931, 933.

§5. Purpose of Publication.

(a) The right of carriers subject to the Act to initiate their charges is too well established to need citation of authority. Such charges are prima facie reasonable, except where otherwise provided by law. White v. Western Union Teleg. Co., 33 I. C. C. 500. 501.

(b) The operation of interstate rates and rules arises out of their approval by the Interstate Commerce Commission and not by the publishing and posting. Harris v. Southern Ry. Co., (S. C. 1915), 85 S. E. 158, 159.

III. POSTING.

§6. In General.

See Courts, (e); Crimes, §10; Distance Rates, §1 (f); Reparation, §9; Special Contracts, §2 (e).

(a) That the carrier failed to keep its rate sheet posted as required by law, is no defense to shipper who has, by accepting a settlement on basis of a transit rate when his shipment was only entitled to the local rate, been guilty of accepting a rebate. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 593.

(b) Failure of defendant to post tariff containing reduction in rate on whiskey from Louisville, Ky., to Ogden, Utah, not sufficient to justify an award of reparation. Sunny Brook Distillery Co., Inc., v. Pa. Terminal Ry. Co., Unrep. Op. A-717.

(c) It is not sufficient, for the purpose of changing a schedule of rates or superseding an existing one, merely to file the new or changed schedule with the Interstate Commerce Commission. This, by itself, does not make it effective, but is only the initial step in that direction. The Act provides that, in order to establish a lawful schedule of rates, it must not only be thus "filed with the Commission," but also "printed and kept open to the public inspection," and the provision, further on, in regard to changes in the schedule of rates, is that they shall not be made except after thirty days' notice to the public, published as aforesaid." What, then, is meant by the expression "published as aforesaid"? It is apparent that these words imply that in making an original schedule, "publication" of some kind was essential to its validity and effectiveness. If reference is made again to the first clause of section six, it is found that the schedule must be first filed with the Commission, and then it must be "printed and kept open to public inspection." This required distribution to and among the different stations or depots at which the schedule of rates must have effect, and this is the construction the highest court has placed upon it. The Act, in this respect, is obscurely worded, as no precise definition is given of the words, "published as aforesaid," or of the word, "published," so that one can know with perfect certainty what kind of publication was intended, and therefore one must resort to interpretation. It evidently meant something more than mere "filing" with the Commission, and the only other thing to which it can fairly and reasonably be referred is the additional requirement that the schedules shall be "printed and kept open for public inspection," and this is "promulgation and publication." Virginia-Carolina Peanut Co. v. A. C. R. R. Co. (N. C., 1914), 82 S. E. 1, 3, 4.

(d) It appears that "publication" means "promulgation and distribution," and is not confined to the mere filing of the schedule with the Commission; it being something besides that, or in addition to it. Virginia-Carolina Peanut Co. v. A. C. R. Co. (N. C., 1914), 82 S. E. 1, 4.

(e) The words "kept open to public inspection" it has been held, do not refer to the "posting of the schedules," and this is clear upon the face of the Act, as separate provision is made for posting them, so that they will be accessible to the public. They can only refer, therefore, to publication. But the amendment of the Interstate Commerce Commission, authorized by the Act, makes perfectly clear what it meant. It provides that the carrier shall place in the hands and custody of its agent at every station, warehouse, or office at which passengers or freight are received for transportation, the schedules of all rates and fares applying from the station or terminal, or other charges applicable at that station, and the same provision is made in regard to any and all changes in the schedules, and this is required to be done 30 days before the schedule or any change therein can become effective. Provision is then made for posting the schedules. Careful and minute provision is then made by the Commission to secure the polite and courteous attention of agents to the requests of shippers for an inspection of schedules filed in their offices. The publication intended by the Act, therefore, is filing with the agents at the several stations the schedules, for public inspection, and this is what has been defined by the court in the Miller Case as "promulgation and distribution." Compliance with this requirement is made a condition precedent to the effectiveness of the schedules and the lawfulness of the rate charged thereunder. But the construction of the court in U. S. v. Miller is unmistakable, and, as defendant could not change the existing schedule, in which the rate was 26c, without a filing and publication of the change, and as this means "promulgation and distribution" among the several offices and stations of the carrier where they are to be kept open for public inspection, and also posted, it has not complied with the law so as to make the later schedule effective, and therefore the charge

should have been made according to the first schedule, that is, 26c per 100 lbs. carload lots. Virginia-Carolina Peanut Co. v. Atlantic Coast Line R. Co. (N. C., 1914), 82 S. E. 1, 4.

(f) Tariffs may be filed on 5 days' notice. Cement Rates from Points in Illinois, 32 I. C. C. 369, 375.

(g) It is not sufficient, for the purpose of changing a schedule of rates or superseding an existing one, merely to file the new or changed schedule with the Interstate Commerce Commission. This, by itself, does not make it effective, but is only the initial step in that direction. The Act provides that in order to establish a lawful schedule of rates, it must not only be thus "filed with the Commission," but also "printed and kept open to the public inspection," and the provision, further on, in regard to changes in the schedule of rates, is that they "shall not be made, except after thirty days notice to the public, published as aforesaid." What then is meant by the expression "published as aforesaid?" It is apparent that these words imply that in making an original schedule, "publication" of some kind was essential to its validity and effectiveness. If we refer again to the first clause of section 6, we find that the schedule must be first filed with the Commission, and then it must be "printed and kept open to public inspection." This requires distribution to and among the different stations or depots at which the schedule of rates must have effect, and this is the construction the highest court has placed upon it. The Act, in this respect, is obscurely worded, as no precise definition is given of the words, "published as aforesaid," or of the word "published," so that we can know with perfect certainty what kind of publication was intended, and therefore we must resort to interpretation. It evidently meant something more than mere "filing" with the Commission, and the only other thing to which it can fairly and reasonably be referred is the additional requirement that the schedules shall be "printed and kept open for public inspection," and this is "promulgation and publication." Virginia-Carolina Peanut Co. v. A. C. R. Co. (N. C.), 82 S. E. 1, 3, 4.

(h) The words "kept open to public inspection" it has been held, do not refer to the "posting of the schedules," and this is clear upon the face of the Act, as separate provision is made for posting them, so that they will be accessible to the public. They can only refer, therefore, to publication. But the amendment of the Interstate Commerce makes perfectly clear what is meant. It provides that the carrier shall place in the hands and custody of its agent at every station, warehouse, or office at which passengers or freight are received for transportation, the schedules of all rates and fares applying from the station or terminal, or other charges applicable at that station and the same provision is made in regard to any and all changes in the schedules, and this is required to be done 30 days before the schedule or any change therein can become effective. Provision is then made for posting the schedules. Careful and minute provision is then made by the Commission to secure the polite and courteous attention of agents to the requests of shippers for an inspection of schedules filed in their offices. The publication intended by the Act, therefore, is filing with the agents at the several stations the schedules, for public inspection, and this is what has been defined by the court in the Miller Case as "promulgation and distribution." Compliance with this requirement is made a condition precedent to the effectiveness of the schedules and the lawfulness of the rate charged thereunder. But the construction of the court in U. S. v. Miller, is unmistakable, and, as defendant could not change the existing schedule, in which the rate was 26 cents, without a filing and publication of the change, and as this means promulgation and distribution" among the several offices and stations of the carrier where they are to be kept open for public inspection, and also posted, it has not complied with the law so as to make the later schedule effective, and therefore the charge should have been made according to the first schedule, that is, 26 cents per 100 lbs. car load lots. Virginia-Carolina Peanut Co. v. Atlantic Coast Line R. Co. (N. C.), 82 S. E. 1, 4.

(i) The Interstate Commerce Act, considered in its entirety, plainly indicates that there must be a publication of the rate as distinguished from posting it. "Publication," by printing and promulgating is one of the steps necessary to establish a rate; and "posting" is an act after it has been established. Beaham v. N. Y. C. & H. R. R. Co., (Mo. 1915), 174, S. W., 150. 152.

IV. CONSTRUCTION.

§7. In General.

See Classification, §17; Reparation, §7½ (d).

(a) The customary meaning of the word "billed" is waybilled at point of origin. It would be an unwarranted construction of the term to hold that it means "received at —— terminals up to and including" specified dates. New York Hay Exchange Assn. v. L. V. R. R. Co., 29 I. C. C. 90, 92.

(b) Where tariffs providing for certain mixtures intentionally exclude the mixture actually shipped, the Commission will not impose a rate not named in the tariff. Lee v. L. S. Ry. Co., 29 I. C. C. 101, 102.

(c) Mill material consisting of "droppings" from boards as they come from the saws, of various shapes and sizes, ranging in length from 12 to 47 inches, some of the pieces of fairly good grade, others split, some having bark or wave on one side, and some having jagged edges, is properly described in a tariff as "waste lumber products, such as clippings, edgings, trimmings, short boards sawed from slabs, and other waste material." Green Bros. Box & Lumber Co. v. C. & N. W. Ry. Co., 29 I. C. C. 473, 474.

(d) Tariffs providing that weight ascertained upon a particular scale should govern, unreasonable. In re Weighing of Freight by Carriers, 28 I. C. C. 7, 30.

(e) Tariff providing for rates on potatoes in barrels not found applicable to shipments in hampers. Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., 28 I. C. C. 274, 276.

(f) Application of interstate distance tariff on grain, istead of Iowa distance tariff, not justified. Iowa Grain Rates, 28 I. C. C. 354.

(g) Term customary deliveries as used in tariff means ultimate destination. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 650.

(h) Rule in circular that agents shall decline to receive shipments of freight "to order" with directions to notify parties elsewhere than at destination point should be filed with Commission. Ludowici-Celadon Co. v. A. C. L. R. R. Co., 28 I. C. C. 693, 696.

(i) Commodity rate applicable to emigrant movables was quoted on mixed carload shipment of agricultural implements, wagons, lumber, glazed sash and roofing paper. The record shows that all the articles were new. The tariff on emigrant movables specifically excepts new articles of the kind shipped. Complaint dismissed. Taylor v. C. B. & Q. R. R. Co., Unrep. Op. A300.

(j) First-class rate applicable to steel window frames and sash attached, should have been applied instead of one and one-half times first class. Monarch Metal Mfg. Co. v. K. C. Ry. Co., Unrep. Op. A305.

(k) Rule that carload freight for delivery to terminal carriers within Chicago switching district will not be delivered until freight charges are paid, not applicable where joint through rates are in effect. Miller & Co. v. P. M. R. R. Co., Unrep. Op. A309.

(l) Contention that it is the custom where a generic term is used in a commodity tariff to apply the rate to all articles carried in classification under the same caption. Tariffs are to be applied as they read, and neither custom nor construction may properly be allowed to vary their terms. West Co. v. E. R. R. Co., Unrep. Op. A316.

(m) Rate applicable to scrap iron should have been assessed on shipment of abandoned steel rolling mill plant, instead of rate applicable to machinery n. o. s. Duluth Iron & Metal Co. v. N. P. Ry. Co., Unrep. Op. A336.

(n) An assertion by a carrier of a "right" to come into a tariff and make it applicable on all commodities or make exceptions, is equivalent to an admission that it has exercised a right or option in so doing, and seems to negative any claim that it entered into the arrangement under duress. Peoples Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657, 660.

(o) The Commission will construe tariffs so as to permit traffic to move, if that be possible. Merchants Exch. of St. Louis v B. & O. R. R. Co., 30 I. C. C. 700, 703.

(p) On general traffic rates published to Chicago from any shipping territory generally apply to private sidings and industrial delivery tracks. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 73.

(q) Tariffs must be applied according to the plain terms of the language employed, regardless of the evident intent of the compilers. Kenner Truck Farmers' Ass'n v. I. C. R. R. Co., 32 I. C. C. 1, 5.

(r) Acceptance of tariffs filed under an order is not equivalent to a finding by the Commission that the tariffs are in compliance with the order. There is nothing in the Act, or in the Commission's rules, regulations or practices to justify such a contention. American Natl. Live Stock Asso. v. S. P. Co., 32 I. C. C. 438, 439.

(s) Complainants entitled to make separate shipments of articles required to constitute a complete furnace under separate bills of lading and enjoy the rate applicable to the separate parts. Ratings applied to complete furnace not found unreasonable. Campbell Heating Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-749.

(t) Shippers are under no obligation to go behind the face of the tariff. City of Nashville v. L. & N. R. R., 33 I. C. C. 76, 89.

(u) Tariffs must be applied according to the plain terms of the language employed. Kenner Truck Farmers' Asso. v. I. C. R. R. Co., 32 I. C. C. 1, 5.

(v) Note excepting Mitchell from application of group rate to Memphis not affected by change of grouping. Cement Rates from Mitchell, Ind., 32 I. C. C. 93, 94.

(w) That low rates were published through error on part of defendant's agent does not relieve carriers. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 256.

(x) Contention that acceptance of tariffs filed under order is equivalent to a finding that tariffs are in compliance with the order not sustained. American National Live Stock Asso. v. S. P. Co., 32 I. C. C. 438, 439.

(y) Error should be discovered and eliminated within a reasonable time. Reshipping Rates on Grain from Omaha, 32 I. C. C., 590, 591.

(z) Cottonseed meal and cottonseed cake should have taken "fertilizer rates" in absence of specific commodity rate, or 6th class in absence of fertilizer rates. Reparation awarded on shipment from Baton Rouge to New Orleans. New Orleans Board of Trade v. L. R. & N. Co., Unrep. Op. A-799.

(aa) Provision in tariff that "if the roads over which traffic moved join" found to be lawful, imposing uncertain and unreasonable conditions upon complainant. Fullerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-895.

(bb) It is a well established rule that tariffs are to be construed according to their language, and the intention of the framers is not controlling. Their terms should be so clearly stated as to avoid misunderstanding or misinterpretation. Haskew Lum. Co. v. N. C. & St. L. Ry., 34 I. C. C. 333, 335.

§8. Ambiguity.

(a) A statement in a tariff rule that the charge for unloading and storing will be "not in excess of $1 per car per day," is not a clear and definite statement of what the charge will be, and should be made specific. Parry & Co. v. P. R. R. Co., 29 I. C. C. 559, 561.

(b) Respondents should reform tariffs so as to state plainly extent of pick-up and delivery service at Baltimore. Atlantic Packing Co. v. Am. Exp. Co., 28 I. C. C. 244, 246.

(c) The statement in tariff rules that a rate or charge shall not be less than a certain amount is in no sense a clear and definite statement of what the charge will be. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 144.

(d) Language of tariff rule stating reconsigning privileges is so involved and ambiguous as to render its correct interpretation a matter of dispute. Carrier will be expected to amend rule within 60 days. Peycke Bros. Commission Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-899.

(e) The pratice of railroad employees that when in doubt as to which of two rates applies to charge the higher rate, is not sound. Jordan v. S. Ry. Co., (S. C. 1915), 84 S. E. 871, 873.

§9. Cancellation.

(a) A tariff, effective October 1, 1913, contained group rates on cement from points in C. F. A. territory to Memphis, Tenn., and New Orleans, La., and points taking the same rates. Mitchell, Ind., was placed in Group 3, known as the Indianapolis group, from which a rate of 14.5c applied to New Orleans. The rate to Memphis from other points in

that group was 14c and the rate from Mitchell and Lehman, Ind., 11c. An exception of these points was effected by the following note: "(34) Rate from Lehman and Mitchell, Ind., only, 11 cents per 100 pounds." Points in Group 2, known as the Vincennes group, took rates of 9c to Memphis and 12.5c to New Orleans. By a supplement Mitchell was placed in the Vincennes group but that supplement did not cancel Note 34. HELD, since note 34 excepted Mitchell from the application of group rates to Memphis the transfer of Mitchell from the Indianapolis group did not affect the rate from Mitchell to Memphis. The silence of a subsequent tariff with respect to rates lawfully in effect cannot be accepted as the lawful cancellation of the previous rate. Cement Rates from Mitchell, Ind., 32 I. C. C. 93.

(b) Note to tariff excepting Mitchell from application of a group rate as to Memphis, not cancelled by supplement thereto. Cement Rates from Mitchell, Ind., 32 I. C. C., 93.

§10. Concurrences.

(a) Carrier filed and posted tariff naming through rate to points to which other carrier was not named as a party and had not concurred. Charges collected on basis of combination of intermediates. Damages awarded. Morton Salt Co. v. M. L. & T. R. R. & S. S. Co., 28 I. C. C. 422, 424.

(b) The mere insertion in the tariff of an erroneous concurrence number did not invalidate the rates shown therein. Bartlett Co. v. C. P. & St. P. Ry. Co., Unrep. Op. A-203.

(c) Changes in station names were not noted in joint tariff and carriers parties to rate are jointly liable for any damage resulting from tariff error. Warner Co. v. D. L. & W. R. R. Co., 32 I. C. C., 244, 246.

(d) Provision in tariff that "if the roads over which traffic moved join" found to be unlawful, imposing uncertain and unreasonable conditions upon complainant. Fullerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-895.

§11. Conflict.

(a) While the tariff published by carrier's agent, being a bureau or committee issue, provided for the application of rates named in the individual issue of the carrier, this did not have the effect of excluding the application of the rates actually named in the bureau or committee tariff issued by the agent. Kenner Truck Farmers' Assn. v. I. C. R. R. Co., 32 I. C. C. 1, 5.

§13. Index.

(a) Rule in tariff requiring notation on bill of lading in order to secure compression of cotton found to have been properly indexed. Napoleon Hill Cotton Co. v. M. K. & T. Ry. Co., Unrep. Op. A-344.

§14. Legality.

See Legal Rate.

(a) Complainant attacked the rate of $133 per car on 11 carloads of cattle from Nephi, Utah, to Los Angeles, Cal. At the time defendant maintained four specific rates on shipments of cattle in 36-ft. cars between the points in question; $133 per car on shipments of less than 8 carloads, $118 on 8 to 14 cars, $106 on 15 to 19 cars, and $99 on 20 cars or more. Complainant ordered 11 cars, but the carrier was able to furnish but 7 cars on the day named in the order. These were loaded and sent forward, and 4 cars furnished and shipped on the next day. The rate of $133 was charged on each carload. HELD, that tariffs of this kind, providing for different rates according to the number of cars shipped, are unlawful, and to award reparation under such circumstances would be to recognize the legality of such practice. Reparation denied. Woodward-Bennett Co. v. S. P. L. A. & S. L. Ry. Co., 29 I. C. C. 664.

(b) When timber is of many kinds, and several kinds of lumber take same rates, there is no impropriety in tariff which permits shipping at carload rates in straight or mixed carloads to and from transit point. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 685, 686.

§18. What Is Legal Rate.

See Legal Rate; Through Routes and Joint Rates, §22.

(a) In the absence of a joint through rate, the lawful rate would have been a combination rate; and it was not necessary, in publishing a joint through rate to cancel or refer to the several factors which would have been applied in the absence of a joint through rate. Bart-

lett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A-203.

(b) Rule that carload freight for delivery to terminal carriers within Chicago switching district will not be delivered until freight charges are paid not applicable where joint through rate in effect. Miller & Co. v. P. M. R. R. Co. Unrep. Op. A-309.

(c) The Commission ought not to impose a charge not specified in tariff where the omission to state such a charge was not due to inadvertence. Lee v. St. L. S. W. Ry. Co., 29 I. C. C. 101, 102.

(d) Under the Interstate Commerce Act the freight rate on an interstate shipment is the lawful rate existing at the time of the shipment and the carrier is required to collect the lawful rate. This liability for the fixed freight charges is not affected by the carrier's waiving or losing its lien on the goods by delivery without collecting the lawful rate. Central of Georgia Ry. Co. v. Southern Ferro Concrete Co., (Ala. 1915) 68 So. 981, 982.

(e) A connecting carrier is bound to know that the lower of two conflicting rates is the legal rate, and to apply such rate. Dreyfuss v. Penn. R. Co., 153 N. Y. Supp., 966, 968.

(f) Where a carrier has published conflicting rates effective contemporaneously in the same tariff, the shipper is entitled to the lower of these rates. Dreyfuss v. Penn. R. Co. 153 N. Y. S., 966, 968.

§19. As Evidence.

(a) A tariff purporting to have been filed with the Interstate Commerce Commission and verified by the certificate of a chairman of the Interstate Commerce Commission is incompetent for evidence, because the federal statute provides that copies of tariff rates on file with that commission shall be received in evidence, if certified by the secretary, under the seal of the commission. Beaham v. N. Y. C. & H. R. R. Co., (Mo. 1915), 174, S. W., 150, 152.

TELEPHONE AND TELEGRAPH COMPANIES.

I. DISCRIMINATION IN SERVICE.
  §1. In general.
II. CHARGES.
  §2. In general.
III. CONTROL AND REGULATION.
  §3. In general.
IV. LIABILITY FOR DAMAGES.
  §4. In general.

II. CHARGES.

§2. In general.

(a) The rule that a railroad may recover the freight rate filed with the Commission though its agent quotes a lower rate to the shipper, does not apply to a charge made by the agent of a telegraph company for sending a message. In the absence of knowledge on the part of the sender as to the rate chargeable under the rules of the company, the sender has a right to rely on the charge made, received and accepted by the company's agent as being the correct charge under its rule. Higbee v. Western Union Telegraph Co. (Mo. App., 1914), 166 S. W. 825.

(b) Under the Interstate Commerce Act, as amended in 1910, a telegraph company can limit its liability for negligence to $50.00 and therefore, where through negligence of the company in sending an interstate message a father was prevented from reaching the bedside of his child before its death, he cannot recover for his mental anguish an amount in excess of the limitation provided for in the company's tariffs, filed with the Interstate Commerce Commission. Western Union Tel. Co. v. Compton (Ark., 1914), 169 S. W. 946.

(c) A stipulation in a telegraph blank limiting the liability of the company to $50.00 in case of negligence is void as unreasonable. Telegraph companies are agencies for the rapid transmission of messages in emergencies which do not permit the slow process of the mails. Such companies are frequently employed as means of communication between utter strangers who know nothing of each other's situations or surroundings. To require the sender of an important telegraphic message, under such circumstances, to value the contract, or, in other words, to fix the limitation of damages that should be recoverable by any of the parties interested on account of the failure of the company to perform its duty, would be to demand that such a party enter upon the most uncertain of speculations. To even require him, as a condition to the acceptance of the message, to fix a limitation upon his own claim, would be little less absurd

and unreasonable. The public have a right to demand the carriage of messages without any such limitation whatever. Yet in the printed stipulations on the messages offered in evidence as a sample of the regulations which have been adopted by the appellee no such option is given to the public. Unless the sender in every instance fixes some value or limitation upon his future claim for damages, the company reserves the right to fix it for itself at a sum not exceeding $50.00. This is an arbitrary denial of a right of which the public cannot be deprived in such a manner. Bailey v. W. U. Tel. Co. (Tex., 1914), 171 S. W. 839, 846.

(d) Under a state statute a recovery for mental anguish against a telegraph company can be had for its negligence in delivering a message in excess of its limitation of $50.00 in the blank. Bailey v. W. U. Tel. Co. (Tex., 1914), 171 S. W. 839, 844.

(e) The extent to which Congress went in amending the Interstate Commerce Act in 1910 is merely to declare that telegraph companies shall be considered common carriers, and to require them to make and observe reasonable rates and charges for the services which they perform; and to permit them to divide their messages into classes, presumably as a basis for rates. The mere fact that Congress has enacted some legislation on this subject does not of itself signify a purpose to monopolize the field and exclude the states entirely. Bailey v. W. U. Tel. Co. (Tex., 1914), 171 S. W. 839, 842.

(f) The Interstate Commerce Act as amended in 1910 has so occupied the entire field and taken complete control of the regulation of telegraph companies as to exclude a state statute providing a penalty for failure to promptly transmit messages. Norfolk Truckers' Exch. Inc. v. Norfolk Southern R. Co. (Va. 1914), 82 S. E. 92.

(g) The Interstate Commerce Act as amended in 1910 has rendered inapplicable a state statute imposing a penalty on a telegraph company for failure to promptly transmit a message. W. U. Tel. Co. v. First Nat. Bank of Berryville (Va., 1914), 83 S. E. 424.

(h) Complainant attacked defendant's standard rates for the transmission by telegraph of messages from New York, N. Y., to San Francisco, Cal., and by cable of messages from New York to points in England, as unreasonable and discriminatory. The regular charge for day telegrams was $1 for ten words or less; 7c for each additional word. Day press dispatches were accorded a special rate of 3 1-2c per word, night dispatches 1 3-4c; but they were required to be in plain language and for publication. The regular cable rate was 25c per word. Press messages were 7c from 6 a. m. until midnight, 5c for the remainder of the night. HELD that the rates attacked were not shown to be either unreasonable or discriminatory. Reparation denied and complaint dismissed. White v. Western Union Teleg. Co., 33 I. C. C., 500.

(i) Congress has, in section 1 of the act, provided that messages may be classified into day, press and such other classes as are just and reasonable, and that different rates may be charged for the different classes. It is plain that both classification and charge are to be made in the first instance by the carrier, and it follows by necessary implication that the carrier is to define the classes and formulate such rules and regulations pertaining thereto as shall be just and reasonable. The initiative is with the carrier. White v. Western Union Teleg. Co., 33 I. C. C. 500, 501.

III. CONTROL AND REGULATION.

See Control and Regulation.

§3. In General.

(a) By the act of June 18, 1910, Congress occupied the field of regulation with respect to interstate telegrams, and a state statute imposing a penalty for failure to make prompt delivery can no longer be invoked. Western Union Telegraph Co. v. Bilisoly (Va., 1914), 82 S. E. 91.

(b) The Interstate Commerce Act as ameneded in 1910 has so occupied the entire field and taken complete control of the regulations of telegraph companies as to exclude a state statute, providing a penalty for failing to promptly transmit messages, Norfolk Truckers' Exch. Inc. v. Norfolk Southern R. Co. (Va. 1914) 82 S. E., 92.

(c) Under a state statute a recovery for mental anguish against a telegraph company can be had for its negligence in delivering a message, in excess of its limitation of $50.00 in the blank. Bailey

v. W. U. Tel. Co. (Tex. 11), 11/ S. W., 839, 844.

IV. LIABILITY FOR DAMAGES.

§4. In General.

(a) The public have a right to demand the carriage of messages without any limitation whatever. Yet in the printed stipulations on the message submitted here as a sample of the regulations which have been adopted by the company no such option is given to the public. Unless the sender in every instance fixes some value or limitation upon his future claim for damages, the company reserves the right to fix it for itself at a sum not exceeding $50.00. This is an arbitrary denial of a right of which the public cannot be deprived in such a manner. Bailey v. W. U. Tel. Co. (Tex.), 171 S. W. 839, 846.

(b) Under the Interstate Commrece Act, as amended in 1910, a telegraph company can limit its liability for negligence to $50.00 and therefore, where through negligence of the company in sending an interstate message, a father was prevented from reaching the bedside of his child before its death, he cannot recover for his mental anquish an amount in excess of the limitation provided for in the company's tariffs, filed with the Interstate Commerce Commission. Western Union Tel. Co. v. Compton, (Ark 1914), 169 S. W. 946.

(c) Under the law of Arkansas, an action will not lie for the recovery of mental anguish arising in the delay of an interstate telegram. Western Union Telegraph Co. v. Simpson (Ark. 1915), 174 S. W., 232, 233.

TERMINAL FACILITIES.

1. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1½. Jurisdiction of courts.
II. DUTY TO PERFORM TERMINAL SERVICE.
§2. In general.
§3. Duty to allow use.
§4. Publication of terminal charges.
§5. Reasonableness of charges.
§6. What are public terminals and facilities.
III. STATUS OF TERMINAL ROADS.
§7. In general.
§8. Definition of "terminal charges."
§9. Allowances.
§10. Discrimination.

CROSS REFERENCES

See Absorption of Charges, §4 (e), §5 (a); Additional Charges, (w); Commodities Clause, II (d); Divisions; Export Rates and Facilities, V (e); Reasonableness of Rates, §34; Routing and Misrouting, §7 (m); Switch Tracks and Switching, §2 (f), §3 (c), §4 (a), (g), (h), (s); Through Routes and Joint Rates, §3½ (a).

1. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Courts, §11 (g), (h); Switch Tracks and Switching, §6 (d); Through Routes and Joint Rates, §1 (o), (r);

(a) Commission cannot compel trunk line to absorb charge of connecting terminal line for gathering freight originating on latter to rails of trunk line. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C., 93, 101.

(b) The public may require the Pennsylvania lines to handle cars to and from industries upon its terminal tracks in the city of Pittsburgh, and the present power of the Commission is adequate to that end. Waverly Oil Works v. P. R. R. Co., 28 I. C. C., 621, 628.

(c) Act so amended that it is for the Commission to say whether as a matter of fact discrimination exists where carrier refuses to open its terminals under a contract for the interchange of freight. Waverly Oil Works v. P. R. R. Co., 28 I. C. C., 621, 625.

(d) While a terminal road is entitled on competitive business to something more than the flat rate where the line haul is given to a competitor, no inflexible rule of law requires the Commission to prohibit in all cases the absorption by competitor roads of the charge which the terminal road has established for the interchange movement. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690.

(e) Upon the record in the case (the terminal road being a complainant instead of a defendant), the Commission

is without power by affirmative order to establish joint through rates applying via the trunk lines and the terminal railroad to and from industries located on the latter not to exceed the rates in effect via the trunk line to and from St. Louis. Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 106.

(f) The provisions of sec. 3 of the Act must be read in connection with the amendments and subsequent provisions, which show that transportation as used in the Act covers the entire carriage and services in connection with the receipt and delivery of property transported. There can be no question that when a carrier used terminal facilities in connection with the receipt and delivery of carload freight transported in interstate traffic, it was subject to the provisions of the Act, and it was obliged as a common carrier in that capacity to afford all reasonable, proper and equal facilities for the interchange of traffic with connecting lines, and for the receiving, forwarding, and delivering of property to and from its own lines and such connecting lines, and was obliged not to discriminate in rates and charges between such connecting lines. By the amendments to the Act, the facilities for delivering freight to a terminal carrier are brought within the terms of the transportation to be regulated. Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370, 374.

(g) Terminal facilities are not exempt from public regulation and subject to exclusive control of the carrier to be dealt with in such manner as it may seem fit. Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370, 376.

(h) Hepburn amendment of 1906 extended term "railroad" to include all spurs, switches, tracks and terminal facilities, etc. Iowa & Southwestern Ry. Co. v. C. B. & Q. R. R. Co., 32 I. C. C., 172, 174.

II. DUTY TO PERFORM TERMINAL SERVICE.

§2. In General.

Switch Tracks and Switching, §4 (i), (k), (r).

(a) Where a carrier has created terminals at great expense, the Commission will not establish a mere switching charge, so that the competitive carriers may by absorbing the charge obtain the virtual use of the terminals. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 627.

(b) Held that no unjust discrimination arose from the fact that the different members of the Pennsylvania system accorded the use of their terminals to one another while refusing it on the same terms to outsiders. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 625.

(c) There perhaps ought to be, and perhaps at some time will be, a general rule applicable to all terminals which can be applied with uniformity. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 626.

(d) A carrier may as a matter of convenience, when its terminal tracks are congested, hold cars at some point short of destination, provided such a course involves no disadvantage to the consignee. Becker v. P. M. R. R. Co., 28 I. C. C. 645, 652.

(e) The B. & O. and Pennsylvania roads are responsible for the condition of their terminals at Baltimore, and if their terminals are not sufficient to insure the prompt delivery of traffic they should be made so. Merchants' & Mfrs.' Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 401.

(f) If the bona fide object of the proceeding is to secure reasonable joint rates over the trunk lines and the terminal railroad, for the benefit of the latter's shippers, then the complaint should be brought in the name of the shippers as complainants, and the terminal railroad should be named as a defendant along with the trunk lines. Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 105.

§3. Duty to Allow Use.

See Act to Regulate Commerce, II (b).

(a) There is nothing sacred about terminals. They are available to the public and may be regulated by the public in exactly the same way that any other part of a railroad can be. But the requirement upon the carrier for the use of its terminal must be reasonable and the compensation must be fixed, not on the basis of mere cost of service, but in view of the fact that terminals are of special value to a railroad as a part of

its system. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 628.

(b) That Pennsylvania R. R. declines to open its terminals to other systems entering Pittsburgh, while arrangement with its own family lines is made, not found to constitute undue discrimination. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 624, 625.

(c) Complainant, the Omaha Grain Exchange, charged that certain of its members, who had built terminal elevators for the handling of grain at Omaha and South Omaha, Neb., and Council Bluffs, Ia., were discriminated against in favor of Kansas City dealers, through the carriers erecting elevators at Kansas City and leasing them at unduly low rental or operating through subsidiary corporations, and preferring shippers using them and shipping out over their lines. Pending the hearing, the alleged irregularities and discriminations were removed. Complainant joined with defendants in requesting that the complaint be dismissed. Complaint dismissed. Omaha Grain Exchange v. A. T. & S. F. Ry. Co., 28 I. C. C. 664.

(d) In a proceeding to determine the right of a carrier to materially increase its terminal charges, the right of such carrier to close its terminals to another carrier engaged in like business is not in issue. Switching at Baltimore, Md., 30 I. C. C. 581, 583.

(e) It is the right of a carrier to protect its terminals against its competitors. Botsford & Barrett v. P. R. R. Co., 29 I. C. 469, 472.

(f) Where one carrier opens its terminal to another and the latter provides for the absorption of the former's switching charge, an industry located on such terminals and shipping under such arrangement is in the same position as an industry located on the rails of the latter carrier. Wabash Sand & Gravel Co. v. V. R. R. Co., 31 I. C. C. 344, 346.

(g) A carrier which has opened its terminals to a competing line, is not in position, in a proceeding for reparation on account of unreasonable switching charges imposed, to contend that it should not be required to open its terminals and make deliveries for a switching charge when it might have obtained a line haul of the traffic. Having performed the service the obligation to charge only a a reasonable rate therefor attached. Hoover, Owens, Rentschler Co. v. C. H. & D. Ry. Co., 31 I. C. C. 550, 551.

(h) The Penn. Ry. possessed extensive terminal facilities at New Castle. Pa., connecting its tracks with a large number of industries. It switched cars between such industries and the point of interchange with the Erie, P. P. & L. E. and B. & O. railways at $2 per car, but refused to switch for the B. R. & P. R. R., which entered the city over the tracks of the B. & O. R. R. The Commission, in 29 I. C. C. 114, denounced the practice as discriminatory and ordered the Penn. Ry. to desist therefrom. Whereupon the Penn. R. R. sought an interlocutory injunction. HELD, that since the relief sought by the B. R. & P. Co. did not involve a use of the tracks or terminal facilities of the Penn. R. R., but merely a service of transportation in receiving and forwarding freight tendered by it to the Penn. R. R. for a reasonable compensation, the case did not fall within the spirit of that portion of section 3 providing that no common carrier shall be required to give the use of its tracks or terminal facilities to another carrier engaged in like business. Penn. Co. v. United States (1914), 214 Fed. 445.

(i) The proviso contained in Section 3 of the Act to the effect that a carrier shall not be required to give the use of its tracks or terminal facilities to another carrier, is not repealed by Congress in the amendments of 1906 and 1910; but by these amendments the jurisdiction of the Commission is extended to apply to the very point covered by the proviso, although there is nothing in these amendments whereby a carrier may be required to give the use of its terminals to a competitor. Iowa & S. W. R. R. Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 172, 174

(j) It is well settled that a carrier cannot close its terminal facilities to the public and restrict their use to shippers located on its line or to shipments originating on its own line Iowa & S. W. R. R. Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 172, 175.

(k) The act, as it now is, provides that transportation which must be furnished to all upon equal terms, includes the delivery of freight as part of its transportation. While section 3 remains part of the Act in its original form, it must be given a reasonable construction

with a view to carrying out all the provisions of the Act and to make every part of it effective, in accordance with the intention of Congress. Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370, 375; 236 U. S. 351; 59 L. ed.

(l) Section 1 of the Act requires railroads subject to the act to furnish transportation, including the transportation of cars of connecting carriers and since adequate provision is made for the return of cars interchanged and for compensation for their use, and the use of tracks incidental to transportation conducted entirely by the carrier whose tracks are used is the very use which railroads are constituted to afford, no property is taken by these provisions. City of Nashville v. L. &. N. R. R. Co., 33 I. C. C. 76.

(m) The Louisville & Nashville and Nashville, Chattanooga & St. Louis Rys. own separate terminals at Nashville, but maintain and operate them jointly under the title of "the Nashville terminals," apportioning the expenses of maintenance and operation monthly on the basis of the total number of cars of all kinds handled for each road. Through the "Nashville terminals" both roads serve the industries on each other's tracks at Nashville in addition to the industries on their own. No charge is imposed upon shippers for the service performed. The Tennessee Central, the only other road into Nashville, maintains separate terminals. The Louisville & Nashville and Nashville, Chattanooga & St. Louis Rys. interchange noncompetitive traffic with the Tennessee Central at a charge of $3 per car, but competitive traffic is interchanged only at the local rates to and from the points of interchange, which rates range from $5 to $36 per car, except that the Tennessee Central switches competitive and noncompetitive grain between the Hermitage elevator and points of interchange with the Louisville & Nashville and Nashville, Chattanooga & St. Louis Rys. for $2 per car. At other points the Louisville & Nashville and Nashville, Chattanooga and St. Louis Rys. interchange competitive and non-competitive traffic with other carriers at the same rates; HELD, that the Louisville & Nashville and Nashville, Chattanooga & St. Louis Rys. interchange competitive and non-competitive traffic with each other at Nashville at cost, exclusive of fixed charges; the charge of $3 per car for switching non-competitive traffic to and from the Tennessee Central is not shown to be unreasonable; the Tennessee Central should not be required to pay greater charges than the L. & N. & N. and Chattanooga & St. Louis Rys. pay each other; the charge of $2 per car imposed by the Tennessee Central for switching grain to and from the Hermitage elevator unduly prefers that elevator. City of Nashville v. L. & N. R. R. Co., 33 I. C. C., 76.

(n) Where one line secures a valuable trackage right of another, the terminals it is thus enabled to reach, should not be closed to the latter line. Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C., 168, 199.

(o) Refusal of two carriers having terminals in a city to exchange competitive traffic with a third carrier on the same terms as noncompetitive traffic, while interchanging both kinds of traffic on the same terms with each other, is unjustly discriminatory, and so long as they switch both kinds of traffic for each other at a charge equal to the cost of service, exclusive of fixed charges, the charges imposed for interchanging traffic with the third carrier should not exceed the cost of service performed. Financial Relations Etc., L. & N. R. R., 33 I. C. C., 168, 204.

(p) Carrier can not restrict use of its terminal facilities to shippers located on or shipments originating on its own line. Iowa & Southwestern Ry. Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 172, 175.

(q) It is well settled that a carrier cannot close its terminal facilities to the public and restrict their use to shippers located on its own line. Iowa & Southwestern Ry. Co. v. C. B. & Q. R. R. Co. 32, I. C. C.,172, 175.

§4. Publication of Terminal Charges. See Tariffs.

(a) Within section 6 of the Interstate Commerce Act, a terminal charge is a separate rate, to be stated "separately," for a service at a terminal, not always rendered in transportation from place to place, for a privilege or facility not furnished to all shippers. N. Y. C. & H. R. R. R. Co. v. General Electric Co. (N. Y. Trial Term, 1914), 146 N. Y. Supp. 322, 326.

(b) Under section 6 of the Commerce Act requiring the schedules of carriers to state separately all terminal charges, a charge by a shipper for "spotting" cars

on its own tracks in its own yard, never published as a terminal charge, is not enforceable against the carrier. N. Y. C. & H. R. R. R. Co. v. General Electric Co., 146 N. Y. Supp. 322, 326.

(c) Within section 6 of the Commerce Act, a terminal charge is a separate rate, to be stated "separately," for a service at a terminal, not always rendered in transportation from place to place, for a privilege or facility not furnished to all shippers. N. Y. Cent. & H. R. R. R. Co. v. General Electric Co., 146 N. Y. Supp. 322, 326.

(d) A separation of terminal charges from the line rate seems to be contemplated by the Act. Industrial Railways Case, 29 I. C. C. 212, 236.

§5. Reasonableness of Charges.

See Bridge Tolls; Evidence, §57½.

(a) Expense of providing terminals in large cities and of operating those terminals may offset greater volume of business handled. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 200.

(b) It has been frequently recognized by the courts and the Commission that the terminal facilities of a carrier are of special value to it, and this fact may be reasonably reflected in the amount of compensation derived from the use of those terminals by connecting lines. Switching at Arcade, N. Y., 30 I. C. C. 501, 503.

(c) That a rate increase is for the purpose of securing a greater division, deemed a fair return, to a terminal line, is no justification for the increase. Rates on Crushed Stone, 29 I. C. C. 136, 137, 138.

(d) If a carrier holds itself out as ready to permit the use of its tracks at a certain charge, it follows that having elected to perform the service, the charge therefor must be reasonable, and the Commission may determine what is the reasonable charge. The concluding proviso of section 3 can impose no obligation to prevent absorption. In determining what is a reasonable rate for such a service the Commission should take into consideration the circumstance that the use of the rate means that the terminal road is deprived of the line haul; but this means nothing more than that the charge should be an adequate one for the movement over the terminal considered by itself. The Act itself imposes no requirement on the Commission that in determining such a reasonable charge it must in some way or other take into calculation the factor that the charge may be absorbed by a competitor road. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690.

(e) Rates for interchange over terminals appear to be made on two distinct bases. First is the so-called reciprocity basis, in which the charge is said not to reflect the cost of service, but is merely an arbitrary rate established by the terminal road under the view that while in a given case it may fall short of affording it a proper return for the service, it will be compensated by service performed for it at the same or other terminals by the roads with which it makes interchange and thus equalization be brought about. Charges made on this basis are obviously not a fair measure of what is a reasonable return for the service when the reciprocal condition does not exist. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 692.

(f) In determining what is a reasonable rate for the interchange movement, the Commission should take into consideration the circumstance that the use of the rate means that the terminal road is deprived of the line haul. Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690.

(g) It has been frequently recognized by the courts and by the Commission that the terminal facilities of a carrier are of special value to it, and this fact may reasonably be reflected by the amount of compensation derived from the use of those terminals by connecting lines. Switching at Arcade, N. Y., 30 I. C. C. 501, 503.

(h) If the M. St. P. & S. Ste. M. Ry. desires to give its shippers the benefit of deliveries on the tracks of other carriers in Chicago, it must expect to pay for the use of such facilities. People's Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657, 661.

(i) Connecting lines should be required to recognize value of terminals and facilities of terminal carrier. Buffalo, Attica & Arcade R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 585.

§6. What Are Public Terminals and Facilities.

(a) Complainant protested against the refusal of defendant to accept interstate carload shipments of freight tendered it at junction points in New Castle, Pa., a city of 40,000 population, and to transport them to industries on defendant's lines within the switching limits of that city, while at the same time accepting and transporting traffic for three other railroads entering New Castle at a uniform charge of $2 per car, as discriminatory. Complainant entered New Castle over the tracks of one of the latter roads. Defendant's terminal facilities consisted of depots, freight stations, yards, team tracks and sidetracks, serving more than 100 industries valued at over $3,000,000. Between these industries and junction points defendant transported cars for the other three railroads at $2 per car within switching limits, and at from 10c per 100 lbs. to $5 per car on industries located outside switching limits, while obliging complainant's customers to dray their traffic. The rate of $2 per car was less than the cost of service, the service being performed for the other three lines in return for similar switching services performed by them for defendant at other cities. The line by whose tracks complainant entered New Castle rendered defendant less service than the others, and complainant itself was in no position to render defendant reciprocal service at any point. HELD, that the refusal of defendant to afford complainant terminal facilities constituted unlawful discrimination, within section 3 of the Act. Ordered that defendant maintain such rates, regulations and practices as will avoid the discrimination complained of. Buffalo, Rochester & Pittsburgh Ry. v. Pennsylvania Co., 29 I. C. C. 114.

(b) Terminals are either open or they are not, and a carrier may not exercise an arbitrary discretion, based upon a strained construction of the proviso of section 3, in saying for what roads and what traffic it will open its terminals and for what other roads and traffic it will decline to do so. Traffic Bureau of Nashville, Tenn., v. L. & N. Ry. Co., 28 I. C. C. 533, 541.

III. STATUS OF TERMINAL ROADS.

See Courts, §10 (a).

§7. In General.

See Divisions, §4 (d), §6 (a); Tap Lines, §3 (2) (a), §9 (g); Through Routes and Joint Rates, §23 (c).

(a) A terminal or belt railway located entirely within a state, but which switches, transfers, loads and unloads cars for trunk lines for an agreed toll or rental, is engaged in interstate commerce, even though it does not participate in through rates and is not a party to bills of lading, and though its charges do not come from the shipper but are made directly against the other carriers. State v. H. B. & T. Co. (Tex. Civ. App., 1914), 166 S. W. 83.

(b) The Interstate Commerce act does not prevent a state commission from passing regulations concerning the use of a carrier's terminal facilities and the interchange of traffic. Vandalia Ry. Co. v. Public Service Commission (Ind. 1914) 106 N. E., 371, 372.

(c) Terminal charge for ship-side delivery should be stated as an additional terminal charge. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C., 272, 279.

(d) Commission considers terminal service in the nature of an additional service for which a reasonable and compensatory charge should be assessed. Mobile Chamber of Commerce v. M. & O. R. R. Co. 32, I. C. C., 272, 279.

(e) Tariff rule providing that no loaded cars will be accepted by terminal association unless accompanied by regular waybill showing consignee and final destination not shown to be unreasonable. Eastern Talc. Co. v. C. & E. I. R. R. Co., Unrep. Op. A-816.

§9. Allowances.

See Allowances.

(a) The Commission considered a reargument of the original report, 21 I. C. C. 304, supplemental report, 28 I. C. C. 93, concerning joint rates with and divisions to the Manufacturers' Railway of St. Louis, Mo. Only one of the contentions raised in the reargument is discussed by the Commission, the others, it is held, having been disposed of in the previous reports. It was urged by complainants that the findings and conclusions contained in the supplemental report were not in harmony with certain of the conclusions of the Supreme Court in

U. S. v. Terminal R. R. Assn. of St. Louis, 224 U. S. 383. That case was considered by the Commission in arriving at the findings in the supplemental report herein, and it is the view of the Commission that the case referred to is not controlling of the issues here involved. The Commission fails to find that its findings and conclusions in the supplemental report were based upon misconception either of fact or law, and these are reaffirmed. On March 1, 1910, the trunk-line carriers at St. Louis cancelled certain allowances which for a number of years they had been making to the complainant and twelve other short lines of railroad that serve industries in and around St. Louis. Thereupon complainant and certain of its shippers petitioned the Commission to re-establish what they termed in their petition the "through or joint rates" that had been in effect previous to the cancellation. The allowances which the complainant railway had been receiving averaged about $4.50 per car. The complainant railway is situated wholly within the limits of South St. Louis. It has about two miles of main line and twenty-three miles of branches and sidings. Its main line connects the Anheuser-Busch Brewing Association, its largest shipper, with the trunk lines, thereby affording an outlet for the large volume of traffic of the brewery. It also serves other industries. The stock of the complainant railway and the brewery is owned mostly by the same parties. The complaint is not directed to the reasonableness of the separate rates, either of the complainant railway or of the trunk lines. At the time these allowances to the complainant railway were cancelled, the trunk lines also were absorbing the charge, usually $3 per car, made by the Terminal Railroad Association of St. Louis on traffic passing over its rails. The capital stock of the latter is owned by the fourteen trunk lines entering St Louis. The trunk lines did not discontinue the absorption of this latter charge when they cancelled the allowances of the complainant railway and other terminal lines, by reason of which complainant railway and its shippers allege that they were subjected to undue prejudice and disadvantage. In the former report the Commission held that the trunk lines in cancelling the allowances to the complainant railway, while continuing to absorb the charge of the Terminal Railroad did not subject complainant railway or its shippers to undue prejudice and disadvantage; that the amounts formerly paid by the trunk lines to complainant railway were voluntary allowances, and could not be considered divisions of joint rates which the Commission could by affirmative order establish; and that the separate rates of the trunk lines and the complainant railway, being necessarily regarded as prima facie reasonable, any joint through rates which could be established by affirmative order would necessarily be higher than the rates of the trunk lines to and from St. Louis by the amount of that part of the through charge that would accrue to the complainant railway. It was further held that while the Commission could not require the carriers to participate with the complainant railway in joint rates that would not be higher than their rates to St. Louis, they might voluntarily participate in joint rates on that basis, provided the carriers did not pay to complainant railway more than was reasonable and just for the service performed. It was held that the former allowance of $4.50 per car was excessive, and it was stated that any excessive payments made by the carriers to the complainant railway would be regarded as unlawful. In the former report the Commission expressed the opinion that a reasonable division to be paid to the complainant railway out of the joint rate would be not to exceed $2.00 per car. Upon further consideration this figure is amended to $2.50, subject to any necessary modification at a later date. The findings and conclusions in the supplemental report are confirmed herein. The trunk lines and complainant railways are required to establish and maintain maximum joint rates to and from point on the complainant railway which shall not exceed in amount the trunk lines' rates to and from St. Louis by more than $2.50 per car. Whether through rates are established on this basis or on the basis of the St. Louis rates, upon failure of the trunk lines and the complainant railway to agree upon divisions, upon request the Commission will fix divisions. In case the Commission is not asked to fix divisions, upon proper cause appearing the Commission may, in its own discretion, institute an inquiry under the provisions of the act which forbid the giving or receiving of rebates. In any view of the case, there must be some point at which the common ownership of the stock of the brewery and that of the complainant railway becomes significant. It would

be manifestly absurd for the complainant railway to be given a division of ten or fifteen dollars per car as its division of the through rate. But it is only in respect to the closer examination of the divisions and concessions it receives that the complainant railway is treated other than any other terminal common carrier that does not serve a mutually-served fndustry would be treated. In the Commission's order complainant railway is made a defendant, although named in the petition as a complainant and not as a defendant. The prayer of the petition can be granted only upon the theory that the complainant railway expects to be dealt with as any other common carrier. From the facts it is evident that the real purpose of the proceeding has been to make the trunk lines the real defendants and have the Commission requfre them to restore to complainant railway the former allowances out of the through rates. If the real object had been to secure bona fide joint rates for the benefit of the shipping public, the more proper procedure would have been for the shippers as complainants, including the brewery, to bring the complaint, naming the complainant railway and the trunk lines as co-defendants. The tariffs of the trunk lines, by which they propose to restore the former allowances of $4.50 per car to the Manufacturers' Railway, ordered cancelled. Manufacturers' R. R. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100.

(b) Where a large industry owns the majority of the stock of a terminal carrier, which receives divisions out of the through rate, there must be some point at which the fact of the common ownership of the stock becomes significant; and immediately beyond the limit of reasonableness in allowances, divisions or concessions of any kind granted by the trunk line to the terminal road comes that point. Manufacturers' Railway Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104.

(c) The terminal railroad, serving a certain industry, and its stock owned by the persons who own the stock of this industry, is treated the same as any terminal common carrier not serving such a mutually owhed industry, except with respect to a closer examination and regulation of the allowances and divisions which it receives. Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104.

(d) In the event of the failure of the trunk lines and the terminal road to establish as between them divisions of the joint through rates, and upon proper cause appearing, the Commission may upon its own motion institute an inquiry into the matter of these divisions, under the provisions of the Act relative to the giving of rebates, having in mind the common ownership of the stock of the brewery company, a shipper, and that of the terminal road. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104.

(e) If the trunk lines and the terminal railroad at St. Louis agree to establish joint through rates to and from industries located on the latter at St. Louis which do not exceed the rates in effect via the trunk lines to and from St. Louis, the terminal railroad shall not, in view of the common ownership of its stock and that of the brewer, one of its shippers, receive as a division of the through rate more than is just and reasonable for the service which it performs. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 105.

§11. Through Routes and Joint Rates.

See Tap Lines; Through Routes and Joint Rates.

(a) Notwithstanding the terminal railroad is named in the petition as a complainant and not as a defendant, in the Commission's order fixing joint through rates it is named as defendant, since the prayer of the petition can be granted only upon the theory that the terminal railroad expects to be dealt with as any common carrier in the through routes over which it asks for the establishment of joint rates. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry., 32 I. C. C. 100, 104.

(b) The terminal railroad, named in the petition as a complainant, in the prayer asks for the establishment of certain joint rates but subsequently cancelled its concurrences in the trunk lines' tariffs naming the through rates. It thereby rendered impossible compliance with the prayer of the petition by the trunk lines, since, under the act and the Commission's tariff regulations, tariffs naming joint rates must show as concurring therein every common carrier in the through route. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry., 32 I. C. C. 100, 105.

(c) An order of the Commission requiring the Pennsylvania Co. at New Castle, Pa., to switch cars for the Buf-

falo, Rochester and Pittsburg Ry., does not amount to a compulsory taking of the use of the terminals of the Pennsylvania company by another road, within the inhibition of section 3 of the Act, since the order gives the Rochester road no right to run its cars over the terminals of the Pennsylvania company, or to use or occupy its stations or depots for purposes of its own, and there is no requirements that the Rochester Company be permitted to store its cars in the yards of the Pennsylvania Company, or to make use of its freight houses, or other facilities; but simply that the Pennsylvania Company receive and transport the cars of the Rochester Company over its terminals at New Castle in the same manner and with the same facilities that it affords to other railroads connecting with the Pennsylvania railroad at the same point. Penn. Co. v. U. S., 35 Sup. Ct. Rep. 370, 376; 236 U. S. 351; 59 L. ed.

THROUGH ROUTES AND JOINT RATES

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CROSS REFERENCES

See Act to Regulate Commerce II (n); Adjacent Foreign Country; Advanced Rates, §5 (2) (w), §7 (6); Basing Points and Lines, §1 (m); Bills of Lading, §2½ (c); Blanket Rates, §10½ (i), (h); Cars and Car Supply, §7 (c); Concentrating Rates and Privileges, (a); Demurrage, §11 (a); Differentials, §4; Divisions; Electric Lines, II; Evidence, §5½ (g); Export Rates and Facilities. V (e); Express Companies, XI; Land Grant Railroads, (a); Long and Short Haul, §2½ (b), §4 (ff); Loss and Damage, §1 (a), §6 (J), §13¾ (b); Panama Canal Act; Passenger Fares and Facilities, §2 (b), §14; Proportional Rates; Reconsignment, §7 (b); Reduced Rates, §4 (d); Routing and Misrouting, §2 (e), (f), §3, §4, §5½, §7 (n); Special Rates and Services, (a); Substitution of Tonnage, §2 (c); Switch Tracks and Switching, §2 (f), §3 (b); Tap Lines, §6 (b . III; Terminal Facilities, §11; Transportation, §1 (e), §5 (d); Water Carriers, §3 (e), (i), IV; Weights and Weighing, §3 (d).

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission, I; Terminal Facilities, §1 (e).

(a) Where the Commission decides that a local rate between two points in

the same state, used as a part of a joint through rate, is excessive, it has power to direct its reduction when used in making up the through rate. D. & R. G. Ry. Co. v. Baer Bros.' Mercantile Co., 209 Fed. 577, 580.

(b) The Commission's power under the act to establish through routes and joint rates is limited to this extent, that it may not require a carrier, without its consent to embrace in such through route substantially less than the entire length of its railroad which lies between the termini of such proposed through route unless to do so would make such through route unreasonably long as compared with another practicable through route that could otherwise be established. Marble Rates from Vermont Points, 29 I. C. C., 607, 608.

(c) The Commission has authority to enforce the right of originating carriers to the long haul, even in the absence of protest. In this connection the matter of through routes and joint rates is not dealt with by section 15 alone, which must be read together with sections 1 and 3. Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C., 609, 618.

(d) In any case where reasonably expeditious through routes do not result from conferences of Direct Routing Committee, Commission has authority to prescribe new and reasonably direct through routes. In re Express Rates, 28 I. C. C., 132, 137.

(e) The manifest intention of the third section provision authorizing the Commission to establish a through route between points where "no reasonable and satisfactory route" already existed, was to permit a railroad to handle traffic by such route as it saw fit, provided it offered a satisfactory route and protected the public interest. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C., 621, 630.

(f) The Commission may establish a joint rate from any point on a terminal where traffic is received by the carrier owning the terminal, to a point upon any connecting line. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 629.

(g) The authority of the Commission to fix a joint rate must be as broad as the service. It must be from the point where the traffic is received to the point where it is delivered by the railroad. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 629.

(h) Section 6 of the Interstate Commerce Act, requiring common carriers to file with the Commission schedules showing the rates and fares for transportation between points on its own route and points on the route of any other carriers where through routes and joint rates have been established, and where no joint rate has been established over a through route, to file the separately established rates and fares, and the provisions of the Carmack Amendment to section 20 are not objectionable as taking the property of the carrier without due process, since no through shipment is required, even where there are two or more competing lines, in some portion of the route, unless there is a rate fixed over each, and if a through route has not been fixed, then the shipper cannot make a through shipment. C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 104 N. E. 581, 584.

(i) Mere insistence by a carrier upon the absence of a scheduled rate as a pretext and device for preventing a shipment of crossties over its line under joint through rates will not justify resort by the carrier to the courts in the absence of advance action by the Commission. T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 889; 234 U. S. —, 58 L. ed. —.

(j) The Commission cannot make an order requiring the establishment of joint through rates where all the railroads participating in the traffic over the through route are not made parties to the proceeding. Hammerschmidt & Franzen Company v. C. & N. W. Ry. Co., 30 I. C. C. 71, 83.

(k) It is well settled that even though through routes and joint rates may exist between two points, the Commission has authority to establish additional routes and to prescribe just and reasonable joint rates to be applied thereto. But the grant of this authority contemplates the exercise of judgment upon the facts disclosed. The right and duty rest with the Commission to establish additional routes and joint rates as the circumstances and conditions may in its judgment appear to require. Merchants' & Mfrs. Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 401.

(l) The power of the Commission to establish through routes is limited by the

Act. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376.

(m) Matter of joint rates is not dealt with alone in section 15, but Commission must read, together with that provision. those contained in sections 1 and 3. Rates on Green Fruit from Idaho, etc., 29 I. C. C., 650, 651.

(n) Section 15 of the Act limits the power of the Commission to establish through routes and joint rates. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 476.

(o) The terminals of a railroad may be regulated and the Commission may establish a through route and joint rate from any point upon the terminals to a point on a connecting line. Switching at Galesburg, Ill., 31 I. C. C. 294, 299.

(p) Even though through routes and joint rates may exist between two points, the Commission has authority to establish additional routes and to prescribe just and reasonable joint rates to be applied thereto. Merchants' & Mfrs' Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 401.

(q) Upon the record in the case, the Commission is without power by affirmative order to establish joint through rates applying via the trunk lines and the terminal railroad to and from industries located on the latter not to exceed the rates in effect via the trunk lines to and from St. Louis. Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 105.

(r) It is not within the power of the Commission to establish through routes and joint rates in a proceeding which does not involve the specific question. American Nat'l Live Stock Ass'n v. S. P. Co., 32 I. C. C. 438, 439.

(s) The law does not require the Commission to establish through routes and joint rates in all instances where carriers have neglected or refused to do so, but does empower it to do so in proper cases, with the manifest intent of giving effect to the general purposes of the Act by securing reasonable facilities to the public and preventing unjust and unreasonable rates, practices and discriminations. Where neither the interest of the public nor the ends of justice as between parties directly interested will be prompted by such establishment, a proper case for the exercise of the authority invoked has not been shown. Each case must be tested by the needs and conveniences of the community served, and the Commission will give heed to the particular facts of the case in the exercise of its discretionary power. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 573.

(t) The Commission will exercise the power to prescribe joint rates whenever and only where the circumstances and conditions of the case clearly warrant it. Even though it be known that a railroad is a common carrier it may be that the purposes of the Act will not be subserved, but the defeated, by the establishment of joint rates with it. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 574.

(u) The Commission is not debarred from establishing an additional through route even though present service is adequate. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 286.

(v) Commission may establish a through route and joint rate from any point upon terminals to a point upon any connecting line. Switching at Galesburg, Ill., 31 I. C. C. 294, 299.

(w) Reading section 1 of the Act, where the general duty of carriers to establish through routes and just and reasonable rates applicable thereto is defined, in connection with section 15, where the authority is given to the Commission to require carriers to establish through routes and joint rates, it is clear that the law contemplates the exercise by the Commission of its judgment upon the facts disclosed, and implies the right and duty to require the publication of joint rates, as the circumstances and conditions developed in each inquiry may seem to justify the one course or the other. C. O. & P. Ry. v. C. & N. W. Ry., 33 I. C. C., 573 576.

(x) The law does not require the Commission to establish through routes and joint rates in all instances where carriers have neglected or refused to do so, but does empower it to do so in proper cases, with the manifest intent of giving effect to the general purposes of the Act by securing reasonable facilities to the public and preventing unjust and unreasonable rates, practices and discriminations. Where neither the interest of the public nor the ends of justice as between parties directly interested will be promoted by such establishment, a proper case for the exercise of the au-

thority invoked has not been shown. Each case must be tested by the needs and conveniences of the community served, and the Commission will give heed to the peculiar facts of the case in the exercise of its discretionary power. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C., 568, 573.

(y) The receipt by the railroad of a shipment destined to a point beyond its line makes a through contract. Berger-Crittenden Co. v. C. M. & St. P. Ry. Co. (Wis. 1915), 150 N. W. 496, 499.

§2. What Is Through Route or "Common Arrangement."

See Loss and Damage, §6 (J).

(a) Beer was shipped from St. Louis via the M. P. Ry. Co. to Pueblo, Colo., 923 miles, and thence via the D. & R. G. R. R. Co. to plaintiff at Leadville, Colo. No through route had been established by the two roads, but the former charged a local rate of 45c. Local waybills were used, but under an understanding between them, whether collected in advance at St. Louis or at destination at Leadville, the freight was always divided between the two companies according to their local rates. In 13 I. C. C. 329, while fixing no new rate, the Commission found that the local from Pueblo to Leadville was too high by 15c, and awarded reparation. The D. & R. G. R. R. refused to pay the amount awarded, and plaintiff brought suit. HELD, that while there was no through rate and no through route, there was in fact a through shipment from St. Louis to Leadville, whose interstate character could not be destroyed by ignoring the points of origin and destination, separating the rate into its component parts, and issuing local waybills. Baer Bros. Merc. Co. v. D. & R. G. R. R. Co., 34 Sup. Ct. 641, 645; 233 U. S. 479, 58 L. ed. —.

(b) A through bill of lading is, as to carriers recognizing it, conclusive evidence of the existence of a through route. Swift & Co. v. P. R. R. Co., 29 I. C. C. 464.

(c) Three carloads of potatoes, loaded in "heater" cars at different stations on the line of the B. Ry. & E. Co., an electric railway, for shipment via Bangor, Me., and the M. C. R. R., to Hoboken, N. J., were damaged by freezing in transit. Though the shippers intended a through shipment to Hoboken, the B. Ry. & E. Co. issued bills of lading only over its own line, but there was a through tariff rate from points of shipment to destination, and the M. C. R. R. in receiving the cars at Bangor advanced to the B. Ry. & E. Co. its proportion of the through freight charges. HELD, that the latter fact is some evidence of a "common control, management or arrangement for a continuous carriage or shipment," as defined by section 1 of the Interstate Commerce Act, and that therefore the B. Ry. & E. Co. was as to such shipments originally within the scope of the Act as amended by the Carmack Amendment and as initial carrier was liable for the defaults of connecting carriers. Ross v. M. C. R. R. Co. (Me., 1914), 90 Atl. 711.

(d) The establishment of athrough route does not necessarily mean that traffic must move via that route where there are other possible routes. It simply opens a new channel by which traffic may move under competitive conditions. Oklahoma Portland Cement Co. v. O. L. & G. Ry., 32 I. C. C. 221, 225.

(e) A through route does not necessitate joint rates, but may be, and frequently is, open to traffic upon payment of the combination of local rates. Eastern Shore Development S. S. Co. v. B. & O. R. R. Co., 32 I. C. C. 238.

(f) Where a common carrier asks that a connecting carrier be required to establish in connection with it through routes and joint rates, upon the point of such carrier's financial responsibility, the discretion of the Commission, given by law, must be exercised upon facts shown of record. Eastern Shore Developement S. S. Co. v. B. & O. R. R. Co., 32 I. C. C. 238, 243.

(g) Two different roads which are under common control not regarded as one. Grain & Hay Exchange v. P. Co., 32 I. C. C., 409, 410, 411.

§3. What is Joint Rate

See Infra, §3½.

(a) On shipment of strawberries from Hood River, Oreg., to Duluth, Minn., diverted at Crookston, Minn., a joint rate of $2 per 100 pounds was assessed for the haul to Crookston, and local rate of 36 cents per crate from that point to Duluth. HELD, not unreasonable. Fitzsimmons-Palmer Co. v. American Express Co., Unrep. Op. A-900.

§3½. Participation in Through Traffic.

See Interstate Commerce, §2.

(a) A terminal or belt railway located entirely within a state, but which switches, transfers, loads and unloads cars for trunk lines for an agreed toll or rental, is engaged in interstate commerce, even though it does not participate in through rates and is not a party to bills of lading, and though its charges do not come from the shipper but are made directly against the other carriers. State v. H. B. & T. Co. (Tex. Civ. App., 1914), 166 S. W. 83.

(b) Paragraph 2 of section 3 not only provides for the "receiving" and "delivery" of traffic by connecting carriers, but also for the "forwarding of passengers and property" and "interchange of traffic" in general. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 480, 481.

(c) Section 7 prohibits any arrangements whereby carriers may prevent the carriage of freight from being continuous from place of shipment to destination, or the carriage of freight from being treated as one continuous carriage. Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 606.

(d) A carrier is responisble for unjust discrimination in rate adjustment as between two places if it serves both or participates in their carrying trade. Greenbaum Co. v. L. & N. R. R. Co., 31 I. C. C. 699, 707.

II. ESTABLISHMENT BY CARRIER.

§4. In General.

See Differentials, §5 (c), §8 (d); Export Rates and Facilities, §2 (c); Water Carriers, §4 (b).

(a) The provision of section 15, that the shipper shall in all instances have the right to determine over which of several competing lines his freight shall be transported, is not a flexible rule of law to be expanded or contracted to meet the needs of carriers under varying situations which may or may not be their own creation, and the Commission has promulgated nothing in the nature of exceptions thereto or exemptions therefrom. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108.

(b) The law requires the establishment and maintenance of through routes and joint rates in order that traffic may be moved, whether in greater or lesser volume and for long or short distances, without the delays or other handicaps of reshipment. It recognizes the carrier's right to its own long haul, hence it releases it from the obligation to participate in a through route between any two points which does not include all or substantially all of its line or lines between those points, except when an unreasonably long or circuitous route would otherwise be created; but it goes further, and where through routes and through rates have been established, reposes in the shipper the right to dictate how his shipments must be routed, both as to terminal carriers and intermediate carriers. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108.

(c) Complainant, engaged in conducting refrigerating plants at Chicago Junction, Ohio, and Port Huron and Delray, Mich., attacked the rate of 15½c on coarse salt in bulk moving under through bills of lading from Cuylerville, N. Y., to Chicago Junction, a distance of 411 miles, and requested the establishment of a through route via Akron, Ohio, and joint rate of 11c per 100 lbs. Salt in carloads, n. o. s., moved to Chicago from Cuylerville under a commodity rate of 14c per 100 lbs., which rate was ordinarily scaled to intermediate points under the regular percentage basis, Chicago Junction taking 78 per cent of the Chicago rate. There was also in effect to Chicago a special rate of 10c per 100 lbs., which was not scaled to intermediate points. The shipments in question were routed through Akron, and defendant having no joint through rates by this route, the charges were based on a 10c rate to Akron, plus the B. & O. Ry. local of 5½c to Chicago Junction, which is 76 miles west. Complainant might have shipped by two other routes, with rates of 13c and 14½c, over distances of 430 and 374 miles, respectively. At the time, a joint rate of 11c existed between Retsof, adjacent to Cuylerville, and Chicago Junction. On complainant's shipments to Port Huron and Delray the rate was 11c. These points are lake ports, but there is no water competition with respect to salt. Complainant is a consumer of salt at Chicago, as well as at the points mentioned. HELD, that the Chicago Junction rate attacked was unreasonable to the extent that it exceeded 78 per cent of the 14c rate to Chicago, but that complainant was not entitled to

a rate of 7.8c, based on the 10c rate to Chicago, since the latter resulted from water competition. The carriers, having created a through route via Akron by issuing through bills of lading, must continue its operation, with a joint rate not exceeding 11c. Reparation awarded. Complaints as to Port Huron and Delray dismissed. Swift & Co. v. P. R. R., 29 I. C. C. 464.

(d) Through rates from Ohio River crossings to Pelham, Camilla and Sylvester, Ga., are constructed by the addition of prescribed arbitraries to the rates to certain of the basing points. They are published in a joint agents' tariff, and thus are joint through rates. Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433, 434.

(e) Under all ordinary conditions a shipper has a right to through routes to distant markets. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 677.

(f) A through route may not exist as a practical matter on account of a prohibitive rate demanded. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 674.

(g) Where a complainant petitioning for the establishment of through routes and joint rates is not yet participating in interstate traffic, the fact that no fares are published nor rates filed with the Commission is no bar to the complaint. Pac. Nav. Co. v. S. P. Co., 31 I. C. C. 472, 477.

(h) Upon the request of the Grand Trunk Ry. Co. the Crosby Transportation Co., a water line, canceled joint rates with the Grand Rapids, Grand Haven & Muskegon Ry. Co., an electric line, causing decrease in movement of Michigan fruit to Milwaukee. Joint rates ordered re-established. Milwaukee Produce & Fruit Exchange v. Crosby Transportation Co., 30 I. C. C. 653, 655.

(i) Complainant, a common carrier with a line of railroad extending from Blanchard to Clarinda in the state of Iowa, a distance of 17½ miles, demanded through routes with the C. B. & Q. R. R. Besides the two terminals, it served College Springs, a town of some 800 inhabitants. There are certain flag stations between the two points mentioned but no other towns. It has a physical connection with the Wabash R. R. at Blanchard, with which it has through routes and joint rates established. It also has physical connection with the C. B. & Q. R. R. at Clarinda, but has been unable to effect through routes and joint rates with this connecting carrier. The defendant admitted that it was willing to establish through routes and joint rates, provided its division of such rates would be no less than its present revenue on such traffic when delivered to points on its line which are some 8 miles removed from College Springs, contending that the traffic moving over complainant's line is competitive, by reason of the fact that it originates some 5 miles from points on its own line, whereas the point is 2 miles on the line of complainant from College Springs. The points to which traffic would be delivered on defendant's line take the same rates as traffic moving from Clarinda. There are 7 industries located on defendant's line at Clarinda, and two located on the line of complainant. The further purpose of the complainant is to compel defendant to accept cars moving over complainant's line destined to these industries located on the line of the defendant. College Springs is in the center of a small community about 8 miles distant from any railroad other than the line of complainant, and this road was constructed by the community to afford an outlet and inlet for their traffic, relieving them of the haul of 8 miles otherwise necessary. Traffic moving out of College Springs via Clarinda now moves at the local rate to Clarinda, where it is rebilled and upon prepayment of charges is forwarded via defendant's line to destination. The chief commodities transported are live stock and grain. In order to reach defendant's line most of the traffic would have to be hauled or driven some 5 miles, whereas via College Springs the haul or drive is about 2 miles; but by reason of the difference in rate from College Springs, very little traffic moves that way. HELD, the contention of defendant that the traffic in question is competitive is not well founded. Necessarily where lines are so interlaced as in this locality, the originating line's territory is much more restricted than where the lines are not so close together, and no good reason appears why through routes should not be established and the C. B. & Q. R. R. required to receive cars from complainant. Iowa & Southwestern Ry. Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 172.

(j) Where a common carrier asks that a connecting carrier be required to

establish in connection with it through routes and joint rates, the burden of proof rests with such complainant to show that it has sufficient financial responsibility to undertake properly the service in which it asks to share. Eastern Shore Development S. S. Co. v. B. & O. R. R. Co., 32 I. C. C. 238, 242.

(k) In a proceeding to procure joint rates from points on a certain railroad, a showing that such railroad, as compared with other railroads granted joint rates, carries substantially nothing but coal, and also that the cost of handling coal is greater from that line than from the others, goes rather to the question of dividends than to the primary issue whether joint rates should be established. Campbell's Creek Coal Co. v. A. A. R. R., 33 I. C. C., 558, 561.

(l) Failure of certain short-line coal-carrying railroads, which have not assumed the obligations of interstate common carriers, to seek or receive joint rates, is no reason for withholding such rates from a railroad which is an interstate common carrier. Campbell's Creek Coal Co. v. A. A. R. R., 33 I. C. C., 558, 561.

(m) A low combination rate obviously is of no value to a shipper if he does not know it exists, or if knowing of its existence, is unable to ascertain its amount. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C., 247, 254.

(n) Establishment of a through route simply opens a new channel by which traffic may move under competitive conditions. Oklahoma Portland Cement Co. v. A. L. & G. Ry. Co., 32 I. C. C., 221, 225.

(o) Through interstate traffic should be subject to just, reasonable, and nondiscriminatory through rates. Switching Charges on Coal and Coke, 32, I. C. C., 444, 448.

(p) Purposes of act may not be subserved by establishment of joint rates. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C., 568, 574.

§5. Dispute Over Divisions.

See Divisions, §4; Tap Lines, §2 (d); Terminal Facilities, §9.

(a) Complainants sought the re-establishment of former joint rates on live stock in carloads from Texas and Oklahoma points via the K. C. M. & O. R. R. to Altus, Okla., and the Wichita Falls lines thence to Wichita. In accordance with the decision in Unreasonable Rates on Meat, 22 I. C. C. 160, joint rates were published between the points in question, not only by defendant, but also via three other routes, by the Wichita Falls lines in connection with the Santa Fe, the Rock Island and the Frisco lines. A dispute arising between the Wichita Falls and the K. C. M. & O. R. R. as to divisions, the joint rates were canceled. It was admitted that the joint rates were reasonable, and that they were from $4 to $11 per car lower than the combination of intermediates. The route via Altus and the K. C. M. & O. R. R. was a highly desirable one; so much so that many shippers preferred paying the combination of intermediates rather than ship by the other routes. HELD, that the application by defendants of combinations of intermediate rates for transportation of live stock in carloads from Texas and Oklahoma to Wichita, via Altus, was unreasonable. Orders entered requiring re-establishment of joint rates. The cancellation of these rates after they had been found reasonable, merely because of a dispute over divisions, was unwarranted. Wichita Business Assn. v. K. C. M. & O. Ry. Co., 29 I. C. C. 669.

(b) Disagreement over division of through rate no justification for canceling through rates. Oklahoma Grain Rates, 28 I. C. C. 462.

(c) Cancellation of joint through rates, leaving higher aggregate of intermediate rates in effect, because carriers failed to agree on divisions, not justified. Reparation awarded. United States Gypsum Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A310.

(d) Where a compress company has signified its willingness to be responsible for cotton in its custody and supports this offer with a bond, a contention by a carrier that it does not wish to assume responsibility for cotton while in the custody of the compress company at transit point does not at all justify the refusal of the carrier to issue through bills of lading on cotton originating on its line. Financial Relations Etc., L. & N. R. R., 33 I. C. C., 168, 216.

(e) On carload of lumber from Burton, La., to Waltham, Mass.,, reconsigned at Jewett, Ill., connecting carrier refused to consent to application of joint through rate of 39c because its division would be

less and combination rate of 45c was charged. HELD, unreasonable and reparation awarded. Fullerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. A-895.

§6. Circuitous Routes.

See Advanced Rates, §18 (8); Long and Short Hauls, §9.

(a) Little merit to contention that lower rates should be made over circuitous line. Transcontinental Rates from Group F., 28 I. C. C. 1, 4.

(b) Petition to establish between two points in same state a through route and joint rate via a circuitous interstate route, dismissed. Haverhill Box Board Co. v. B. & A. R. R. Co., 28 I. C. C. 336.

(c) Distance is an important element in determining whether routings are or would be satisfactory, and in these proceedings this element weighs against the establishment of the proposed routes. U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 522.

(d) Generally speaking, shippers are entitled to a reasonable charge by the direct line of transportation, and an unreasonable rate by the direct line cannot be allowed for the purpose of permitting a circuitous line to engage in the business at a reasonable profit. Grain Rates in Central Freight Assn. Territory, 28 I. C. C. 549, 558.

(e) The Commission cannot properly allow an unreasonable rate by the direct line for the purpose of permitting the circuitous line to engage in the business at a reasonable profit. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 558.

(f) The short line with two or more line hauls may meet the rate by the long line and decline to establish a joint through rate by the short line, unless the line is so circuitous as to be unreasonably long within the definition of section 15. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 563, 567.

(g) Complainant demanded the establishment of a through route and joint rates on transportation from New York and Jersey City to Baltimore, Md., via Allentown and Gettysburg, Pa., and attacked the joint class rates from Philadelphia, Pa., and Brills, N. J., through Gettysburg as unreasonable and discriminatory. Five different through routes, varying slightly in length and averaging about 188 miles, were in existence, while the through route sought is circuitous and about 110 miles greater and one over which through traffic would not be likely to move in any great volume. Owing to withdrawal of store-door delivery at the Baltimore terminal of the present through routes congestion is less marked, as merchants are becoming accustomed to changed conditions, and there is no reason for thinking that the additional route would result in the handling of any considerable volume of freight through the W. M. R. R. terminals. Moreover, through car and through train service, as provided via the direct routes, could not be maintained via Gettysburg. Rates on the six numbered classes to Baltimore via Gettysburg are from Brills 34c, 29c, 23c, 18c, 15c and 12c, and from Philadelphia 27c, 22c, 18c, 13.5c, 11.5c and 10c. From Brills the rates are the same as from New York via the direct lines, while from Philadelphia, 229 miles, they are somewhat higher than via the direct lines, 95 miles. HELD, that the public interest does not require a through route with joint rates via Gettysburg in addition to the several existing through routes over the direct routes; and that no good reason exists why the circuitous routes via Gettysburg should be required to establish and maintain the same rates as the direct lines. Complaint dismissed. Merchants & Mfrs. Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396.

(h) Where joint through rates over a circuitous route are cancelled, though a shipper may still reach points of destination by a short line at the same rate, he may still suffer from the fact that under the cancellation he loses the advantage of delivery upon a particular line; which in the case of an article like cement is often a matter of some importance. Cement Rates from Mason City, Iowa, 30 I. C. C. 426, 428.

(i) Cancellation of joint rate by route by which respondent received shorter haul, justified. Marble Rates from Vermont Points, 29 I. C. C. 607.

(j) Additional route with joint rates over circuitous lines might not insure the handling of any considerable volume of traffic. Merchants' & Mfrs.' Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 400.

(k) Prayer for through route and joint rates from Jersey City and New York to Baltimore over a circuitous route through Gettyburg, Pa., denied in view of existing routes with joint rates by more direct lines. Merchants' & Mfrs.' Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 401.

(l) Carriers whose mileage exceeds that of the short line by not less than 15 per cent should be granted authority to meet the rates of the short line and to carry higher rates to intermediate points not less than 800 miles distant from Galveston. Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 632.

(m) 22-cent rate on hogs to Kansas City, Mo., will remain in effect via more direct routes, and joint rate via circuitous route allowed to be cancelled. Rates on Hogs from Sioux Falls, S. D., Unrep. Op. A-840.

§7. Obligation to Carry.

(a) Carriers must keep their through routes open and in operation and furnish the necessary facilities for transportation, and the established through route must be served without respect to the fact that in rendering the service the carriers' cars may be carried beyond their own lines. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 624.

(b) The establishment of a through route does not necessarily mean that traffic must move via that route where there are other possible routes. Oklahoma Portland Cement Co. v. A. L. & G. Ry. Co., 32 I. C. C. 221, 225.

§8. Relation to Similar Points.

See Relative Rates.

(a) In 29 I. C. C., 682, complainant contended that the action of the K. & M. Ry. according main line rates on coal from mines on the K. & W. V. R. R. and on the C. & C. Ry., while compelling mines on the C. C. R. R. to pay an additional charge of 15c for hauling from points on the latter line to Dana, W. Va., constituted unjust discrimination. The Commission so found, and directed the main-line rates to be extended to the C. C. R. R. or cancelled as to the K. & W. V. R. R. and the C. & C. Ry. Upon the K. & M. Ry. choosing the latter alternative a rehearing was asked and granted. On rehearing complainants again demanded joint through rates from points on the C. C. R. R. to the interstate destinations mentioned in K. & M. Ry. tariff I. C. C., No. 31, equal to the main-line rates from points on the K. & W. Va. R. R. and C. & C. Ry. The C. C. R. R. extended 13 miles, from Putney to Dana, 5 miles south of Charleston, W. Va. The K & W. Va. R. R. and the C. & C. Ry. joined the K. & M. Ry. at Charleston, and mainline rates applied from Blakely on the K. & W. V. R. R. and from Coalton on the C. & C. Ry., 34, and 172 miles, respectively from Charleston, HELD (1) that the failure to accord to mines on the C. C. R. R. rates accorded their competitors on the other lines mentioned constituted unjust discrimination; (2) that failure to accord joint rates to certain short coal-carrying roads which had not assumed the obligations of interstate common carriers was no reason for withholding such rates from the C. C. R. R. Campbell's Creek Coal Co. v. A. A. R. R., 33 I. C. C. 558.

§9. Right to Favor Own Line.

See Discrimination, §7, §10; Equalization of Rates, §3 (d); Origin of Traffic; Routing and Misrouting, §5½ (g).

(a) The theory that the inbound carrier has no right to be concerned regarding the line of movement of the outbound traffic would hold if all railroads were owned by the government or by a single company, but it does not hold under the law as it now stands. Congress has expressly placed upon the Commission the prohibition against forming a through route which gives to the originating carrier less than the full length of its line haul, "unless to do so would make such through route unreasonably long." Wichita Board of Trade v. A. T. & S. F. Ry. Co., 29 I. C. C. 376, 379.

(b) The right of a carrier to limit markets and create a monopoly on behalf of industries located on its line has been considered by the Commission in a long line of cases. Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609, 614.

(c) A line originating freight and in position to transport it to destination over its own rails and by the shortest route, cannot be compelled to maintain a through route with another carrier, but may insist on conserving to itself the long haul. Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609, 612.

(cc) The Commission considered a proposed cancellation of through routes and joint rates on green fruit from Oregon Short Line points to destinations on and east of the Missouri River, and a few Kansas and Nebraska points. Under current tariffs, this traffic might be routed via the Colorado gateways over the A. T. & S. F., M. P., C. R. I. & P., and C. B. & Q. R. Rs., but the tariff under suspension would eliminate these routes and restrict traffic to the U. P. Ry. The suspended tariff was considered in connection with those under suspension in Lumber Rates to Eastern Points, 29 I. C. C. 609, and in these tariffs the U. P. lines have attempted to eliminate the competition of other lines for the traffic passing between local territory of the O.-W. R. R. & N. Co. and Oregon Short Line and the Missouri River. HELD, following 29 I. C. C. 609, that respondents have not justified the proposed elimination of through routes and joint rates via the Colorado gateways. Cancellation of proposed tariff directed. Rates on Green Fruit from Idaho, Oregon and Utah, 29 I. C. C. 650.

(d) It is improper for a carrier to restrict the movement of coal over its line to coal originating on its line. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 677.

(e) Carrier permitted to discontinue through route voluntarily maintained for four years, which embraced substantially less than the entire length of its railroad. Rates on Cottonseed and Its Products, 28 I. C. C. 219, 221.

(f) No preferred parties or special interests, even though pertaining to the extraordinary functions of government, are entitled to special consideration in the administration of those portions of section 15 prohibiting any arrangement requiring a carrier, without its consent, to establish a through route and to embrace therein substantially less than the entire length of its line. United States v. U. P. R. R. Co., 28 I. C. C. 518, 524.

(g) Through route denied because carrier would have to participate in traffic embracing substantially less than the entire length of its line. U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 523.

(h) A carrier cannot reserve to itself the long haul if to do so works unduly to the detriment of shippers. Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 591.

(i) In establishing through route, no railroad should be required to haul traffic over less than the entire length of its line, unless such route is unduly circuitous. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 630.

(j) Through route denied because carrier would have to participate in traffic embracing substantially less than the entire length of its line. U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 523; Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621, 630.

(k) Where a through route is established over three connecting lines, of which the third owns all the stock of the second, and the second all but a few shares of the stock of the first, the initial line is entitled to the benefits of section 15 of the Act, and if a satisfactory through route exists via the three lines, they cannot be required to give long-haul traffic to a competing line within a short distance of its origin. Lumber Rates from North Pacific Coast Points, 30 I. C. C. 111, 113.

(l) A carrier cannot be compelled to join in a through route where it will get much shorter hauls than it would get under a more circuitous route. Merchants & Mfrs. Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 399.

(m) A rule is not in violation of section 15 which gives the shipper the option either of dictating the routing or of accepting a special low rate upon condition that the traffic shall be routed by the shipper via the carrier's long-haul junctions or route or shall be routed by the carrier. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108.

(n) Carrier released from obligation to participate in a through route which does not include all or substantially all of its line or lines, except when an unreasonably long or circuitous route would otherwise be created; but the shipper has the right to designate both the intermediate and terminal routing. Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 108.

(o) A carier cannot reserve to itself the long haul if to do so works to the detrimnet of shippers. Paducah

Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 591.

(p) Commission may not require a carrier without its consent to embrace in such through route substantially less than the entire length of its railroad unless to do would make such route unreasonably long. Marble Rates from Vermont Points, 29 I. C. C. 607, 608.

(q) Carrier held to be justified in cancelling joint rate via route by which it received the shorter haul. Marble Rates from Vermont Points, 29 I. C. C. 607.

(r) On coal from Kanawha district, W. Va., to Cincinnati switching territory over the K. & M. road and C. & O. road and its connections should not be granted; such a route would give the K. & M. a short haul of much less than entire length of its line. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 679.

(s) The provision that a carrier is entitled to the benefit of the long haul via its own line is restricted to cases where there are through routes and joint rates, and is not available as a defense where a carrier has insisted on a choice of routes giving it the long haul, where both routes were under combination rates. Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C. 142, 143.

(t) Carrier permitted to cancel through rates from points on the O.-W. R. R. & N. Co., to points on or east of the Missouri River via Plummer, Idaho, so as to secure to its lines the longest practicable haul. Lumber Rates from North Pacific Coast Points, 30 I. C. C. 111, 114.

(u) The right of a carrier to retain for itself the long haul on traffic which it originates is well established. Wheeler Lumber, Bridge & Supply Co. v. A. T. & S. F. Ry. Co., 30 I. C. C. 343, 344.

(v) Section 15 prohibits the Commission from entering an order embracing in any through route substantially less than the entire length of a carrier's line. Cement Rates from Mason City, 30 I. C. C. 426, 429, 430.

(w) A carrier cannot expect wholly to retain traffic from points into which it has first extended. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 578.

(x) Even in establishing through routes with through rates, in proper proceedings looking to that end, the Commission cannot deprive a carrier of the benefit of a full haul over its own line, unless there is a finding, based, of course, upon adequate evidence, that the haul over the entire distance would make the through route unreasonably long. St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed. 80, 84.

(y) The contention that a carrier has a right to protect its own local lines by reserving the destination territory it serves for shippers located on its own lines, to the exclusion or disadvantage of shipping points not on its lines, is not well founded. Oklahoma Portland Cement Co. vs. O. L. & G. Ry. Co., 32 I. C. C. 221, 225.

(z) Delivering line entitled to long haul in absence of protest from connections on which traffic originated. Lumber Rates from Oregon and Washington to Eastern Points, 31 I. C. C. 191, 192.

(aa) Even in establishing through routes with joint rates, in proper proceedings looking to that end, the Commission cannot deprive a carrier of the benefit of a full haul over its own line, unless there is a finding, based, of course, upon adequate evidence, that the haul over the entire distance would make the through route unreasonably long. St. L. I. M. & S. Ry. Co. v. U. S. 217 Fed. 80, 84.

(bb) Establishment of through routes and joint rates merely to enable a carrier to wrest from its connections, or an agent from its principal, greater compensation, not viewed with favor by Commission. New York Dock Ry. v. B. & O. R. R. Co., 32, I. C. C., 568.

(cc) It is not in violation of the act for a carrier to accept shipments to points on lines of other carriers to which points it has no joint through rates. North American Smelting Co. v. B. & O. R. R. Co., Unrep. Op. A-804.

(dd) In number of cases Commission has held that respondents were within their rights in endeavoring to give their lines the long haul where to do so would not be unreasonable or unduly prejudicial. Cancellation of Routes in Connection with Wool and Mohair to Eastern Points, Unrep. Op. A-844.

§11. What Is Satisfactory Through Route.

See Supra, §1.

(1) In General.

(a) Complainants asked the establishment of through rates and a joint rate of 75c on cotton from Lone Wolf and Sentinel, Okla., to Galveston, Tex., with compression at Wichita Falls, Tex. The rate sought was in effect via several routes, with privilege of compression at Altus, Okla., but while no charges were made at the Wichita Falls compress for handling and storage, a charge was made at Altus. At Wichita Falls there were also superior commercial advantages for the disposition of cotton. The charge for compression was observed by the carriers at both points. HELD, that the advantages to be secured by shippers from compression at Wichita Falls were not such as to justify an establishment of additional routes, the existing routes being neither unsatisfactory, so far as concerned transportation, nor unduly long. Complaint dismissed. Corporation Commission of Oklahoma v. K. C. M. & O. Ry. Co., 32 I. C. C. 384.

(b) Complainant, N. Y. D. Ry., assailed defendants' refusal to join with it in the establishment of through routes and joint rates on interstate traffic between its stations on the Brooklyn, N. Y., water front and points in and west of trunk-line territory, while according such routes and rates to the B. T. R. R. and the L. I. R. R., as unjustly discriminatory. For its services to defendants in receiving and delivering freight, complainant received 4 1-5c on traffic to or from points beyond defendants' western terminals, 3c to and from points on their lines and 3c on grain in bulk in all cases. The N. Y. D. Ry. Co. was organized by the N. Y. D. Co. to operate tracks on its premises, had issued but $3,000 preferred stock and no common stock, and paid the dock company all net earnings after deducting sufficient to pay dividends on its outstanding stock. Various terminal and railway companies operated terminals immediately adjoining the dock company. Complainants' business consisted in transporting trunk-line cars by means of car floats, float bridges and tracks between New Jersey and Manhattan Island trunk-line terminals and its Brooklyn team tracks and depots. It neither issued its own bills of lading nor filed nor participated in interstate tariffs. HELD, that there was no apparent necessity or demand on the part of shippers for the establishment of through routes and joint rates. Complaint dismissed. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568

(c) Where the portion of the general public involved is 'adequately served, where there is no apparent necessity or demand on the part of shippers for the establishment of through routes and joint rates, and where there is absence of unjust or unreasonable rates, practices or discriminations, the Commission cannot view with favor an effort to require the establishment of such routes and rates merely to enable a carrier to wrest from its connection or an agent to wrest from its principal greater compensations. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 575.

(d) Complainant, N. Y. D. Ry., assailed defendant's refusal to join with it in the establishment of through routes and joint rates on interstate traffic between its stations on the Brooklyn, N. Y., water front and points in and west of trunk line territory, while according and the L. I. R. R. as unjustly discriminatory. For its services to defendants in receiving and delivering freight complainant received 4 and 1-5c on traffic to or from points beyond defendant's western terminals, 3c to and from points on their lines and 3c on grain in bulk in all cases. The N. Y. D. Ry. Co., was organized by the N. Y. D. Co. to operate tracks on its premises, had issued but $3,000 preferred stock and no common stock, and paid the dock company all net earnings after deducting sufficient to pay dividends on its outstanding stock. Various terminals and railway companies operated terminals immediately adjoining the dock company. Complainant's business consisted in transporting trunk-line cars by means of car floats, float bridges and tracks, between New Jersey and Manhattan Island trunk line terminals and its Brooklyn team tracks and depots. It neither issued its own bills of lading nor filed or participated in interstate tariffs. HELD, that there was no apparent necessity or demand on the part of shippers for the establishment of through routes and joint rates. Complaint dismissed. New York Dock Ry. B. & O. R. R. Co., 32 I. C. C., 568.

(e) The Commission will exercise the

power to prescribe joint rates whenever and only where the circumstances and conditions of the case clearly warrant it. Even though it be shown that a railroad is a common carrier, it may be that the purposes of the Act will not be subserved, but be defeated by the establishment of joint rates with it. New York Dock Ry. v. B. & O. R. R. Co, 32 I. C. C., 568, 574.

(f) Where the portion of the general public involved is adequately served, where there is no apparent necescity or demand on the part of shippers for the establishment of through routes and joint rates, and where there is absence of unjust or unreasonable rates, practices, or discriminations, the Commission cannot view with favor an effort to require the establishment of such routes and rates merely to enable a carrier to wrest from its connection or an agent to wrest from its principal greater compensations. New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 575.

§11. (2) When Through Route Ordered or Denied.

(a) Available and feasible routes already open, via which joint rates are in effect. No good reason why a joint rate should be established over still another route. Birge-Forbes Co. v. G. & W. R. R. Co., 28 I. C. C. 409, 411.

(b) Complainant prayed for the establishment of joint rates on grain in carloads from Montana points on the N. P. Ry. west of Billings, Mont., over the C. B. & Q. R. R. via Billings to Omaha and South Omaha, Neb., and Council Bluffs, Iowa; and for the establishment from stations in Montana, North Dakota and South Dakota on the C. M. & St. P. Ry. of rates to Omaha, South Omaha and Council Bluffs not greater than those charged by said carrier from the same points of origin to Duluth and Minneapolis. Competition for Montana grain is strong between the Missouri River and Minnesota destinations mentioned, but rates via the N. P. Ry. from points west of Billings to Minneapolis and Duluth are uniformly 5c below the rates to Omaha via the N. P. Ry. to Billings, and C. B. & Q. R. R. eastward. From Billings to Minneapolis, Duluth and Omaha, the distance is, respectively, 882, 898 and 892 miles. While the route to the Missouri River destinations involves a two-line haul, there is no unusual difficulty and expense attached to the switching of cars at Billings. Rates from points in Montana, North Dakota and Sotuh Dakota to Minneapolis and Duluth via the C. M. & St. P. are generally 5c below the rates to Omaha, but rates from the Judith Basin territory, in Montana, are the same to Minneapolis, Duluth and Omaha, and the 5c spread diminishes from Malaga, Mont., eastward as the Judith Basin is approached. The lower rates from the Judith Basin are due to cross-country competition with the G. N. Ry. All grain originating on the C. M. & St. P. west of Mobridge, S. D., passes through that point to the destinations in question. Mobridge is distant from Minneapolis, Omaha and Duluth, respectively, 386, 529 and 547 miles. While the distances to Omaha and Duluth are substantially the same, the carrier meets competition of the G. N. Ry. and N. P. Ry. at Duluth which compels it to accord the Minneapolis rate. While the distance from Mobridge to Omaha is 35 per cent greater than the distance to Minneapolis, the center of the grain producing section is Roundup, Mont., 846 miles from Minneapolis and 980 miles from Omaha, making the haul to Omaha but 15 per cent greater than that to Minneapolis. HELD, that (1) the N. P. Co. and the C. B. & Q. R. R. should establish joint rates on grain from Montana points on the N. P. Ry. Co. west of Billings to Omaha, South Omaha and Council Bluffs not higher than contemporary rates from the same points of origin to Minneapolis via the N. P. Ry., and (2) that the essential disparity in distance traversed over the C. M. & St. P. Ry. as between points of origin in Montana, North Dakota and South Dakota, and Minneapolis on the one hand, and between the same points and Omaha on the other hand, warrants a difference in the rate; that the present difference of 5c is discriminatory and prejudicial, and that, except where at present equal rates apply, the C. M. & St. P. R. R. should establish from said points to Omaha, South Omaha and Council Bluffs, a rate not to exceed by 2c the contemporary rate from such points to Minneapolis. Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572.

(c) Cancellation of through routes involving three-line haul in favor of other two-line haul routes between same points under same rates, justified. Lumber Rates through Ohio River Crossings, 29 I. C. C. 38.

(d) Through route required to be maintained for coarse salt for Cuylerville, N. Y., to Chicago Junction, through Akron, Ohio. Swift & Co. v. P. R. R. Co., 29 I. C. C. 464.

(e) Public interest considered in matter of establishing or cancelling through route. Marble Rates from Vermont Points, 29 I. C. C. 607, 608.

(f) Cancellation of through class rates on hay and the charging of combinations of rates from Indiana and Ohio to Memphis, Tenn., justified. Memphis Grain & Hay Asso. v. A. A. R. R. Co., Unrep. Op. A408.

(g) Cancellation of joint rates justified and the application of the combination rates not found unreasonable. Feeders' Supply Co. v. M. K. & T. Ry. Co. of Tex., Unrep. Op. A463.

(h) Cancellation of joint rates on lumber between the Bellingham & Northern Railway and the Minneapolis, St. Paul & Sault Ste. Marie Railway not justified. Cancellation of East-bound Joint Rates from Stations on the Bellingham & Northern Ry., Unrep. Op. A522.

(i) Through routes and joint rates denied via circuitous route in view of existing routes with joint rates by more direct lines. Merchants' & Mfrs.' Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 401.

(j) Complainants alleged that defendants declined to establish joint rates for two-line hauls of stock cattle and stock sheep from points in Arizona to feeding grounds in California, in conformity with the holding in American National Live Stock Asso. v. S. P. Co., 26 I. C. C. 37, and prayed that through routes and joint rates be established via all available routes where joint rates were not in effect, and for reparation. The case mentioned did not provide for joint through rates between the A. T. & S. F. Ry. and the S. P. Co., though many California feeding points could be reached only by shipment over two or three lines. The A. T. & S. F. Ry. afforded a one-line haul from Arizona points to the Imperial Valley in California, longer, however, at some points by 101 miles than the route afforded by the A. T. & S. F. Ry., the A. E. R. R. and the S. P. Co. HELD, that defendants should establish through routes and joint rates for transportation of stock cattle and stock sheep, not exceeding 85 per cent of the rates on fat cattle and fat sheep, from all Arizona points on their lines to California feeding points, whether the haul be over two or three lines To the rates prescribed there might be added $2.50 per car for a branch-line haul and $5.00 for a haul over two or more lines. The limitation of the latter charge to hauls of 500 miles or less was cancelled. Reparation denied. American Nat'l Live Stock Asso. v. S. P. Co., 32 I. C. C. 438.

(k) Advantages to be secured by shippers from compression at Wichita Falls not found to be such as to justify the establishment of additional routes. Corp. Comm. of Oklahoma v. K. C. M. & O. Ry. Co., 32 I. C. C. 384, 386.

(l) The complainant sought the establishment of joint reshipping carload rates by the Wabash Railroad Company in connection with the Chicago & Alton Railroad Company on wheat, corn and articles taking the same rates, from Omaha and South Omaha, Neb., and Council Bluffs, Iowa, via Mexico, Mo., to certain stations on the main line of the Chicago & Alton, and to all south branch stations of the Chicago & Alton from Mexico to the Missouri River. The complainant sought the establishment of joint rates to these intermediate main-line stations which should be no higher than the joint rate in effect to the Mississippi River crossings. Prior to the hearing reasonable joint reshipping rates were published to the south branch points. It appeared there was reasonable necessity for joint rates via Mexico to the mainline stations of the C. & A. R. R. in Missouri. HELD, joint reshipping rates to the main-line stations of the Chicago & Alton Railroad Company between Mexico and the Mississippi River have been shown to be necessary and proper, and should be published, taking a rate of 9c on wheat and 8c on corn to the Mississippi River as a maximum. Reparation awarded on certain shipments to south branch stations. Omaha Grain Exchange v. C. & A. R. R., 32 I. C. C., 597.

III. BILLS OF LADING.

See Bills of Lading, Common Carrier, §6½ (c); Export Rates and Facilities, II.

§12. Issuance in General.

(a) Refusal of rail carriers to issue through billing in connection with water carriers denies Tampa its natural ad-

vantages of location. Tampa Board of Trade v. L. & N. R. R. Co., 30 I. C. C. 377, 381.

IV. REASONABLENESS AND DISCRIMINATION.

§13. In General.

See Advanced Rates, §5 (2) (ee), §17 (p); Blanket Rates, §6 (f); Equalization of Rates, §3 (d), (k); Differentials, §7 (c); Discrimination, §4 (w), (ff), §5 (k), (n); Evidence, §20 (hh).

(a) A test of discrimination is the ability of one of the carriers participating in two routes to put an end to the discrimination by its own act. Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 680.

(b) The fact that through rates on water-borne traffic to Duluth and to rate-breaking points in the northwest may be low is not sufficient reason for depriving those points of benefits of those great channels by imposing higher rates upon outbound shipments to intermountain and south Pacific Coast terminals. Transcontinental Rates from Group F, 28 I. C. C. 1, 4.

(c) Through rates are based on the sum of the intermediates, but earnings on traffic are not divided east and west of river on any such basis, proportional rate from river crossing to interior point being usually higher than local rate from river to that point. Interior Iowa Cities Case, 28 I. C. C. 64, 69.

(d) Through rates for through service are sometimes unreasonable because one of the proportionals entering into through charges is excessive. Interior Iowa Cities Case, 28 I. C. C. 64, 73.

(e) Shipper has no legal grievance with respect to through traffic, unless compelled to pay excessive charges for through services. Interior Iowa Cities Case, 28 I. C. C. 64, 73.

(fg) Rate for a long through haul ordinarily should be less than the combination of two or more intermediate rates between same points over same route. Colorado Mfrs. Assn. v. A. T. & S. F. Ry., 28 I. C. C. 82, 83.

(h) Through rate ought not to equal the sum of the intermediates. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 28 I. C. C. 193, 202.

(i) Through tariffs are often constructed which are less than the full combination of rates. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 202.

(j) Through rate from eastern destinations to Missouri River ought to be somewhat less than the combination upon Mississippi River. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 213.

(k) Reduction of inter-river rate should carry with it a corresponding reduction of the joint rate, as that is made up of rate of Mississippi River, plus rate between that and the Missouri River. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 213.

(l) Ordinarily, through rate should be less than combination of intermediates. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232.

(mn) Carrier might accept less for through service than reasonable local rate. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 234.

(op) Carriers not justified in increasing factor where through rate exceeds sum of intermediate rates. California-Nevada Lumber Rates, 29 I. C. C. 313, 315; Omaha-Oklahoma Fresh Meat Rates, 28 I. C. C. 454, 458.

(q) Factor of combination through rate from Memphis to Little Rock not found unduly prejudicial as compared with proportional rate on through shipments between same points on traffic originating in different localities. Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co., 28 I. C. C. 529, 532.

(r) Reasonableness of through rate made up of proportional rate from Illinois points to Chicago, and reshipping rate to Toronto, Canada, not considered. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 562.

(s) If carriers publish for interstate use, state rates which are lower than through charge, section 4 must be observed, unless permission to the contrary is granted upon application to the Commission. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 563, 568.

(t) Factor of intermediate rates, not

on file with Commission, and used in absence of through rate, found unreasonable. Mercantile Lumber and Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701, 702.

(u) Through rate exceeded combination of rates prescribed by state commission plus interstate rate. Upon this evidence alone cannot find that the rate charged was unreasonable. Hudson & Rigby v. H. & B. R. R. Co., Unrep. Op. A215.

(v) Lower joint rate via competing line than combination rate in effect via route of movement. Combination rate not found unreasonable. Lindsay Bros. v. C. B. & Q. R. R. Co., Unrep. Op. A230.

(w) Reparation awarded on basis of combination through rate reduced to equal joint through rate, one factor of which was not on file with this Commission. Smith Lumber Co. v. S. P. Co., Unrep. Op. A389.

(x) While recognizing the carrier's standpoint of preserving the integrity of through rates, the Commission must also look to the means employed for this purpose and rates to and from gateways used as factors in constructing through rates must be no more than reasonable. Peanut Rates to Oklahoma City, Okla., 30 I. C. C., 346, 347.

(y) Mile for mile, the through rate might be lower than for short distances. Duluth Log Rates, 29 I. C. C. 420, 422.

(z) On rehearing of Thompson v. A. T. & S. F. Ry. Co., 25 I. C. C. 174, holding rates charged on carload shipments of apples from Espanola, N. Mex., to certain Arizona points to be unreasonable in so far as they exceeded 80c, minimum 30,000 lbs., provided that where necessary to transfer such apples from narrow-gauge cars to standard-gauge cars, or vice versa, the minimum of 30,000 lbs. be applied regardless of the number of narrow-gauge cars required. Espanola is on a narrow-gauge line of the D. & R. G. R. R., 33 miles north of Santa Fe, N. Mex., and rule 5 of Transcontinental Freight Bureau Tariff No. 12-D, ordered to be established as to shipments from Espanola, was not applicable to points on narrow-gauge lines. Cost of operation per ton-mile on the narrow-gauge line of the D. & R. G. R. R. from Antonito to Santa Fe was 4.16c; average case on both broad and narrow-gauge lines 6.9 mills. Density of tonnage on the same line was 21,597, and on all lines 586,298. There was a joint rate of 79c from Espanola to San Antonio, Tex.; 67c from Durango, Colo., via Espanola, to Texas points, and 75c from Espanola to Texas common points. At time of rehearing the 80c rate from Colorado common points and Santa Fe to Arizona points had been increased to $1, minimum 30,000 lbs. HELD, that the 80c rate found reasonable in the former case was possibly too low. A joint rate should be established from Espanola on the same basis as the $1 rate maintained from Santa Fe, the 30,000-lb. minimum to be maintained. The direction requiring the observance of rule 5 was affirmed. Reparation awarded. Thompson v. A. T. & S. F. Ry. Co., 31 I. C. C. 138.

(aa) On re-argument of Kelly's Creek Colliery Co. v. K. & M. Ry. Co., 29 I. C. C. 671, wherein it was directed that carriers establish joint rates on coal between stations on the K. & M. Ry. and certain eastern and southeastern points on the C. & O. Ry., not in excess of those applied by the C. & O. Ry. from its mines on its own line, it appeared that while in many cases there was a shorter haul from K. & M. points of origin to Gauley, W. Va. (the point of junction with the C. & O. Ry.) over the haul from C. & O. points to that junction the greater expense of operation and maintenance in the latter case would counterbalance the factor of the two-line haul in the former. Nevertheless as a general rule movements over the through route would necessitate an extra switching movement at Gauley. HELD, that there may properly be a slight difference between the rates applicable to the through route and to the single movement on the C. & O. Ry. not exceeding 5c per ton. Hughes' Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10.

(bb) The test of discrimination is the ability of one of the carriers participating in two through routes to put an end to the discrimination by its own act. Elevations Allowances at St. Louis and East St. Louis, 30 I. C. C. 696, 699.

(cc) Services performed in transportation of logs and lumber from Paducah, Ky., across the river to Brookport, Ill., thence to Metropolis, Ill., cannot be treated as independent or separate services, but must be considered in their integral relation to the through hauls.

Metropolis Commercial Club v. I. C. R. R. Co., 30 I. C. C. 40, 41.

(dd) The plain, unmistakable requirement of the law is that through traffic shall be subject to just, reasonable and non-discriminatory through rates. Hammerschmidt & Franzen Co. v. C. & N. W. R. R. Co., 30 I. C. C. 71, 82.

(ee) Fact that carrier has entered into joint rates with lines for traffic from local points destined to non-competitive points in order to compete for long haul, does not present a situation similar to that obtaining at water-locked points where there is no competition between rail lines. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 369.

(ff) Establishment of joint rates on terminal basis from water-locked points on salmon while denying same to shingles not found to constitute unjust discrimination. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 370.

(gg) Order requiring carriers to reduce intermediate rates to equal junction-point rates denied where joint through rates canceled containing such rates had been filed through error. Cement Rates from Mason City, 30 I. C. C. 426, 429.

(hh) Maintaining through routes from one section and not maintaining such routes from other sections, where a prejudicial difference in rate is thereby effected, is such discrimination as the Act was intended to meet. Oklahoma Portland Cement Co. v. O. L. & G. Ry. Co., 32 I. C. C. 221, 225.

(ii) The plain, unmistakable requirement of the law is that through interstate traffic shall be subject to just, reasonable and non-discriminatory through rates. Switching Charges on Coke and Coal, 32 I. C. C. 444, 448.

(jj) That certain rates from coal mines were etstablished by the predecessor of a respondent carrier under an assurance given at the time the mines were opened does not justify respondent's refusal to extend to other mines joint rates on a similar basis. Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660, 663.

(kk) Individual lumber mills prejudiced by not being accorded through rates when such rates are accorded by the same carriers to their competitors similarly situated, may obtain the benefit of such rates upon a record showing their clear title thereto. Wisconsin & Arkansas Lum. Co. v. St. L. I. M. & S. Ry., 33 I. C. C., 33, 43.

(ll) The complainant attacked rates on acid phosphate, C. L., from Shreveport, La., to points in Texas, as unreasonable and unduly prejudicial compared with rates from New Orleans, Gretna and Harvey, La. The rates complained of were made on a mileage basis and ranged from 4c for distances up to 25 miles to 17¾c for 300 miles and more via single lines or lines operated under one management and control. Rates over two or more lines were made by adding the single line rates of each carrier. From New Orleans to Texas common points, including the points involved, distances 369 to 549 miles, defendants maintained a rate of 14c. The principal competition of complainants is with New Orleans. There is little competition between Shreveport and Little Rock; and while it is possible that traffic from Little Rock to some of the points may pass through Shreveport, to most of the points the direct route is not through Shreveport. The rates complained of apply on both fertilizer and acid phosphate. From defined territories to Texas Common Points the rates on acid phosphate are uniformly 9 cents less than on fertilizer. In Va.-Carolina Chemical Co. v. St. L. I. M. & S. Ry., 18 I. C. C. 1, the Commission fixed rates from Memphis on fertilizer. The single line rates from Shreveport for distances up to 125 miles are lower than those rates; for distances 125 to 175 miles they are the same; for distances 200 to 300 miles they are higher than from Memphis. The Commission has held on various occasions that it is just and proper to charge a higher rate for a two line haul than would be reasonable for a one line haul. In Corporation Commission of Oklahoma v. A. & S. Ry. Co., 26 I. C. C. 520, a scale of arbitraries was fixed for two line hauls. On class E, applying on fertilizer, this arbitrary was 2c. The same principle has been applied in other cases, and no reason appeared for not applying it in this case. HELD, that the present single line rates on acid phosphate from Shreveport to the destinations involved were not unreasonable, and not unduly prejudicial except in those instances where they exceeded the rates contemporaneously in effect from New Orleans to the same points; that for the future such rates should not exceed the rates from New

Orleans; that defendants' present rates for two line hauls are unreasonable, and, subject to the same limitations as to the relative maximum rate, that rates for a haul over two or more lines should not exceed those for a haul over one line for a like distance by more than 2c per 100 pounds. Meridian Fertilizer Factory vs. A. & S. Ry. Co., 33 I. C. C. 160.

(mm) Maintaining through routes from one section and not from other sections, where a prejudicial difference in the rate is effected, is such discrimination as the act was intended to meet. Oklahoma Portland Cement Co. v. A. L. & G. Ry. Co., 32 I. C.C., 221, 225.

(nn) Through rates should bear a proper relation to total distance involved. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32, I. C. C., 233, 236.

(oo) Because of uncertainty as to what interstate traffic would be affected, Commission could not refuse to permit rates to take effect merely because some might be used to make unreasonable through rates. Baltimore Switching Charges, 32 I. C. C. 376, 378.

(pp) Where joint rates have been in effect for several years, the natural inference is that they are remunerative to the carriers. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594.

(qq) Joint rate cancelled and combination rate in force when cross ties moved from Franks and Funston, La., to Lometa, Tex., found unreasonable to the extent that it exceeded joint through rate subsequently established. Reparation awarded. Tilford-Hunt Lumber Co. v. H. & S. R. R. Co, Unrep. Op. A-772.

(rr) Combination rate on cross ties from Franks and Funston, La., to Lometa, Tex., found unreasonable to extent that it exceeded subsequently established joint through rate. Reparation awarded. Tilford-Hunt Lumber Co. v. H. & S. R. R. Co., Unrep. Op. A-772.

(ss) Combination through rate of 30 cents on dressed yellow pine lumber from Poplarville, Miss., to Benton Ridge, Ohio, found unreasonable to the extent it exceeded the through rate of 28 cents now in effect. Reparation awarded. Shaffmaster v. N. O. & N. E. R. R. Co., Unrep. Op. A-774.

(tt) Reparation awarded on lath from Edenton, N. C., to Pocomoke City, Md., thence reconsigned to Crisfield, Md., on basis of rate for through haul to Crisfield plus $5 for reconsignment. Cranston Lumber Co. v. N. C. R. R. Co., Unrep. Op. A-779.

(uu) Combination of intermediate rates on oak lumber from Provo, Ark., to Vesper, Kan., found unreasonable and reparation awarded on basis of subsequently reestablished joint through rate. Kansas City Bridge Co. v. DeQueen & E. R. R. Co., Unrep. Op. A-782.

(vv) That joint through rate was subsequently established, or that a lower rate was in effect via competing lines, is not sufficient to prove unreasonableness of rate applied to coal tar from Fort Dodge, Iowa, to Moline, Ill. Lewis Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-819.

(ww) Rate on bar iron from Fort Smith to Mena, Ark., found unreasonable. Rate on shipments received from connecting lines which originate beyond Fort Smith should not exceed rate from Fort Smith proper. Beck & Corbett Iron Co. v. K. C. S. Ry. Co., Unrep. Op. A-836.

(xx) Charges on horses and mules from Billings, Okla., to McKinney, Tex., assessed on basis of through rate plus a separate charge on two additional animals loaded in car without knowledge of carrier's agent. Russell Bros. v. C. R. & P. Ry. Co., Unrep. Op. A-863.

(yy) On shipment of strawberries from Hood River, Oreg., to Duluth, Minn., diverted at Crookston, Minn., a joint rate of $2 per 100 pounds was assessed for the haul to Crookston, and local rate of 36 cents per crate from that point to Duluth. HELD, not unreasonable. Fitzsimmons-Palmer Co. v. American Express Co., Unrep. Op. A-900.

(zz) Rate on fresh fruits and vegetables from Los Angeles, Cal., to Seattle and Tacoma, Wash., made up of basing factor of 25 cents to San Francisco basing points and 55 cents fifth-class and 51 cents class-C from those points to destination. Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points, Unrep. Op. A-912.

(aaa) Complainant attacked the combination rate of $1.81 1-2 on sugar in carloads from Crockett, Cal., via Los Angeles, to Goldfield, Nev., as unjust and unreasonable. Via the short line, a through rate of $1.54 applied. The route via Los Angeles was 340 miles longer

than the short line, and involved a four-line haul. HELD, that the rate assailed was not unreasonable. Complaint dismissed. Goldfield Cases, 34 I. C. C. 360, 376.

(bbb) Complainant attacked the general adjustment of rates between Danville, Va., and points in the east, west, and south as unreasonable and discriminatory compared with rates to Lynchburg, Richmond, and Roanoke, Va. First class rates to Danville were: from Cincinnati and Louisville, 68c; Chicago 103c; Baltimore, all rail 71c; Baltimore, W. & R. 63c; New York, all rail, 77c; New York, W. & R. 69c; Atlanta, 84c; and New Orleans, 110c; the respective hauls all rail, being 536, 599, 820, 278, 467, 409, and 902 miles. First class rates from Cincinnati, Louisville, Chicago, Baltimore, and New York to Lynchburg were 65.6, 65.6, 75.8, 54.6, and 56.7c for distances of 470, 533, 754, 212, and 401 miles. Subsequent to the hearing carriers had made readjustments in the rates from the west to points in Carolina territory, in which Danville, lay, and established to such points rates on grain and grain products lower than the class rates. HELD that the general adjustment between Danville and points in the west, east, and south was not unreasonable and not discriminatory, but that the carriers who had made readjustment to Carolina points should establish corresponding rates on grain, grain products, and flour to Danville. RATES ON COAL: Complainant attacked the rate of $2.20 on coal from Pocahontas 259 miles, and other West Virginia fields to Danville, as unreasonable and discriminatory as compared with a rate of $1.50 to Lynchburg, 205 miles. The rate to Martinsville, Va., was $1.80. The average ton-mile revenue to Danville was 8.1 mills; car-mile earnings, 40½c, minimum 50-ton. HELD that the rate of $2.50 to Danville was unreasonable to the extent that it exceeded $1.80. Reparation denied. City of Danville, Va., v. S. Ry., 34 I. C. C., 430, 440.

(ccc) Complainant attacked the through rate of 26c on wheat, all rail, from Minneapolis, Minn., via Chicago, Ill., and Hillsdale, and Litchfield, Mich., to New York, N. Y., and points taking the same rate, and also attacked the aggregate rate of 26.7c on wheat shipped from Minneapolis, milled in transit at Hillsdale or Litchfield, and forwarded thence as flour to New York, as unreasonable and discriminatory compared with the through rate of 25c on flour. In addition to the rate of 26.7c complainant paid a transit charge of 1-2c. HELD that the all-rail rate on wheat shipped from Minneapolis, milled in transit at Hillsdale or Litchfield, and forwarded as flour to New York, was unduly prejudicial to millers at Hillsdale, and Litchfield to the extent it exceeded by more than the established transit charge the through rate on flour. Reparation denied. Stock & Sons v. C. M. & St. P. Ry., 34 I. C. C. 481.

(ddd) Complainant attacked the general adjustment of class and commodity rates to Spartanburg from eastern points. Buffalo-Pittsburg territory, Ohio and Mississippi River crossings, points in central freight asso. territory, and Virginia cities, as unreasonable and discriminatory as compared with rates to Charlotte, N. C. First class all-rail and ocean-and-rail rates from the east were as follows:

From	To Charlotte		To Spartanburg		To Athens		To Atlanta	
	All rail	Ocean and rail	All rail	Ocean and rail	All rail	Ocean and rail	All rail	Ocean and rail
Boston,	$1.08	$0.96	$1.31	$1.19	$1.17	$1.05	$1.17	$1.05
New York and	1.03	.91	1.26	1.14	1.17	1.05	1.17	1.05
Philidelphia	.97	.85	1.19	1.07	1.10	.98	1.10	.98

Rates From the East: All-rail rates were made a differential over ocean-and-rail rates. Charlotte was 188 miles from the nearest port, Wilmington, N. C., and Spartanburg 223 miles from Charleston, S. C.; and both ports were 300 constructive miles from Boston and 250 miles from other North Atlantic ports. Local first class rates from Norfolk, Wilmington, and Charleston to Charlotte were 68, 62, and 68c; to Spartanburg, 84 70, and 70c. First class joint through ocean-and-rail rates from New York to Charlotte, Spartanburg and Atlanta were 92, 114, and 105c for distances of 438, 473, 510. Plus insurance, the Charlotte rate

was $1.00. All-rail rates were 12c over the ocean-and-rail rates. The first class all-rail rates from New York to Charlotte and Spartanburg were 103 and 126c for distances of 608, and 684 miles. That from the Virginia cities to Spartanburg exceeded the rate to Charlotte by but 16c. The combination on Norfolk, Va., exceeded the all through rate from New York to Spartanburg, made to meet water competition, by 10c. HELD, (1) that the ocean-and-rail rates from eastern points to Spartanburg via Charleston, S. C., were discriminatory in so far as they exceeded the ocean-and-rail rates to Charlotte, N. C.; (2) all-rail rates from the east to Spartanburg were discriminatory in so far as they exceeded the all-rail rates to Charlotte by more than the rates to Spartanburg from Virginia Cities exceeded the rates to Charlotte, from Virginia cities; (3) fourth section application for authority to charge joint through rates from eastern points to Spartanburg higher than combinations on Norfolk, denied. **Rates From the West:** The following were the rates from Cincinnati, a representative point, on the first six classes, and on flour and grain:

	1	2	3	4	5	6	Flour	Grain
Spartanburg	$1.05	$0.94	$0.84	$0.68	$0.56	$0.44	$0.30	$0.29
Charlotte	.89	.78	.62	.47	.39	.31	.28	.26
Difference	.16	.16	.22	.21	.17	.13	.02	.03

These rates were via the Virginia cities; but the short-line distances via Asheville, N. C., to Spartanburg was 250 miles less than through the Virginia Cities. By this route Spartanburg was intermediate to Charlotte and 76 miles less distant from western points. HELD that rates from Ohio and Mississippi river crossings and central freight asso. territory to Spartanburg on traffic moving through Ohio River crossings and Asheville, N. C., were discriminatory in so far as they exceeded the rates to Charlotte. **Rates from Buffalo-Pittsburg Territory:** The following were the rates to Spartanburg and Carolina territory based on the local rates to Virginia cities plus proportionals beyond:

	1	2	3	4	5	6
Prior to Feb. 1, 1915	130	118	97	75	62	55
Since Feb. 1, 1915	127½	113	97	75	62	50

HELD that such rates were not shown to be unreasonable or discriminatory. Spartanburg Chamber of Commerce v. S. Ry., 34 I. C. C. 484.

(eee) Complainant attacked the carrates on straw from points on the M. K. & T. Ry. between Black Walnut and North Jefferson, Mo., inclusive, to Alton, Ill., as unreasonable and discriminatory; contending that the finding in the Straw Rate Cases, 29 I. C. C. 562, was erroneous. HELD that the contention was without merit, and that the rates assailed were neither unreasonable nor discriminatory. Alton Box Board & Paper Co. v. I. T. R. R., 35 I. C. C. 1.

§13½. Factor of Through Rate.

• See Intra, §23 (a).

(a) Where the Commission decides that a local rate between two points in the same state, used as part of a joint through rate, is excessive, it has power to direct its reduction when used in making up the through rate. D. & R. G. Ry. Co. v. Baer Bros. Mercantile Co., 209 Fed. 577, 580.

(b) Through rates found unreasonable because proportional rate as factor of through rate is excessive. Interior Iowa Cities Case, 28 I. C. C. 64, 74.

(c) Excessive proportional rate may make through charges unreasonable. Interior Iowa Cities Case, 28 I. C. C. 64, 73.

(d) Factor of combination through rate from Memphis to Little Rock not found unduly prejudicial as compared with proportional rate on through shipments between same points on traffic originating in different localities. Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co., 28 I. C. C. 529, 532.

(e) Factor of intermediate rates, not on file with Commission, and used in absence of through rate, found unreasonable. Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701, 702.

(f) Proportion of combination rate on farm wagons from South Bend, Ind., to Cairo, Ill., destined to Obion, Tenn.. found

unreasonable. Reduction ordered and reparation awarded. Obion Hardware Co. v. V. R. R. Co., Unrep. Op. A162.

(g) State rates separately established rate applicable to through traffic found unreasonable as compared with state rate applicable to traffic between same points. HELD, unreasonable, and reparation awarded. Daugherty, McKey & Co. v. F. E. C. Ry. Co.. Unrep. Op. A253.

(h) Where traffic in question is through traffic, the rate specifically attacked, although a separately established rate of the delivering line, cannot be considered entirely apart from its relationship to the through rate for the through haul from interstate points of origin. Poehlman Bros. Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 89, 92.

(i) A shipper whose through rate is reasonable and non-discriminatory cannot complain of the division thereof. It does not follow that the component parts of a carrier's through rates are beyond the regulation and control of the Commission. It sometimes happens that a through rate is unreasonable because of the excessive character of a component proportional rate, and the Commission's authority to reduce the unreasonable through rate by reducing the excessive proportional rate is beyond question; but where a proposed through rate is found reasonable and there is no evidence that it is discriminatory a component proportional cannot be attacked. Malt Rates to New Orleans, La., 30 I. C. C. 587, 590.

(j) It is not the separate factors in a through rate, but the rate or charge as a whole, to which the test of reasonableness must be applied. People's Fuel & Supply Co. v. G. F. W. Ry. Co., 30 I. C. C. 657, 659.

(k) The rate specifically attacked, although a separately established rate of the delivering line, cannot be considered entirely apart from its relationship to the through rate. Poehlman Bros. Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 89, 92.

(l) Commission has frequently held that a shipper whose through rate is reasonable and non-discriminatory cannot complain of the division thereof. Malt Rates to New Orleans, La., 30 I. C. C. 587, 590.

(m) Authority to reduce the unreasonable through rate by reducing the excessive proportional rate is beyond question. Malt Rates to New Orleans, La., 30 I. C. C. 587, 590, 591.

(n) An interstate rate, except for fourth-section purposes, should be deemed indivisible in gauging its justice and reasonableness. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 709.

(o) Commission has repeatedly held that a shipper whose through rate is reasonable cannot usually attack one of the proportionals which may be a factor of the through charge. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 710.

(p) Factor of through rate on farm wagons from South Bend, Ind., to Cairo, Ill., destined to Obion and Somerville Tenn., found unreasonable. Reparation awarded. Obion Hardware Co. v. C. I. & S. R. R. Co., Unrep. Op. A-838.

(q) Factor of through rate on I. c. l. shipment of dry goods from Seattle, Wash., to Ketchikan, Alaska, higher than local rate caused by rate war between ocean carriers, not found unreasonable. Fleischner, Mayer & Co. v. N. P. R. R. Co., Unrep. Op. A-889.

(r) Whether or not movement to a transit point is part of an interstate movement will depend in each case upon all the relevant circumstances and conditions. Michigan Bean Jobbers' Asso. v. G. R. & I. Ry., 33 I. C. C. 318, 321.

(s) It is well recognized that a through rate may be unreasonable by virtue of a factor which is abnormal and that the Commission has power in such a case to make the necessary corrections of that factor. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 365.

(t) A shipper has no legal grievance with respect to his through traffic, unless compelled to pay excessive charges for the through service. If the through charges are lawful in the sense that they are reasonable charges for the through service, a shipper can not predicate unlawfulness of one of the component parts of the through charges by alleging that it is excessive compensation to that carrier for that part of the through service. He pays for the completed service, and it is no concern of his how the charges are divided, so long as the through charges for the through carriage are reasonable. Northern Pine Mfrs. Ass'n v. C. & N. W. Ry., 33 I. C. C. 360, 365.

(u) Application of full locals as parts

of through rates on potatoes and onions from stations named, via Louisville, Ky., found unreasonable and reasonable factors prescribed. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 237.

(v) Principle should be invoked that the local rate should be considered in connection with the entire haul. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 236.

(w) Factor of through rate on l. c. l. shipment of dry goods from Seattle, Wash., to Ketchikan, Alaska, higher than local rate caused by rate war between ocean carriers, not found unreasonable. Fleischner, Mayer & Co. v. N. P. Ry. Co., Unrep. Op. A-869.

(x) Minimum weight applicable to through rate on peanuts from Suffolk, Va., to Muskogee, Okla., exceeded minimum applicable to local rate from Suffolk to Memphis, Tenn., used as a factor in construction of through rate. Reparation awarded. Goodner-Malone Co. v. M. P. R. R. Co., Unrep. Op. A-907.

(y) A finding by the Interstate Commerce Commission that a local intrastate rate used as a factor for a through interstate rate could not be considered apart from its relationship to the through rate, does not prevent such shipper from subsequently attacking such local rate before a state commission. C. M. & St. P. Ry. Co. v. State Public Utilities Comm'n, (Ill. 1915), 108 N. E., 729, 731.

§14. Divisions.

See Divisions.

(a) The Commission cannot deny a carrier a reasonable division out of joint rates because of past or present derelictions, or even the fear of further violations of the law. L. & P. Ry. Co. v. United States, 209 Fed. 244, 254.

(b) Generally true that a carrier may reasonably accept less than its local rate as its division of a joint rate. Sandstone, Minn.,-Missouri River Building Stone Rates, 28 I. C. C. 269, 273.

(c) Commission has frequently held that a shipper whose through rate is reasonable and non-discriminatory cannot complain of the division thereof. Malt Rates to New Orleans, La., 30 I. C. C. 587, 590.

(d) Commission has repeatedly held that a shipper whose through rate is reasonable cannot usually attack one of the proportionals which may be a factor of the through charge. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 710.

(e) Under the law the question of divisions is a matter to be arranged by the carriers party to through routes and joint rates unless the carriers are unable to agree, in which event they may apply to the Commission for an adjudication of the question. Campbell's Creek Coal Co. v. A. A. R. R., 33 I. C. C. 558, 561.

(f) Willingness of carrier to accept a certain proportion as its share of the through rate does not establish that as a measure of what would be a reasonable proportion. Rate on Lumber and Other Forest products, 32, I. C. C., 484, 485.

(g) Rates on paper bags from Hudson Falls and Ballston, Spa, N. Y., to New Orleans, La., and Mobile, Ala., not found unreasonable. Commission has frequently held that a shipper whose through rate is reasonable and non-discriminatory cannot complain of the divisions thereof. Union Bag & Paper Co., v. D. & H. Co.. Unrep. Op. 814.

§15. Exceeding Combination of Intermediates.

See Supra, §13 (h); Infra, §16 (d), (e); Passenger Fares and Facilities, §2 (c), (d), §14 (h).

(a) Complainant alleged that defendant's rate of 42c per 100 lbs. for the transportation of less-than-carload shipment of stearic acid from Ivorydale, O., to Sheboygan Falls, Wis., was unreasonable, and in violation of section 4, to the extent that it exceeded intermediate class rate of 20c from Ivorydale to Chicago and 20c from Chicago to Sheboygan Falls. Prior to the hearing, the aggregate of the intermediate rates was raised to 48c. HELD, that the rate charged was excessive to the extent that it exceeded the aggregate of the former intermediate rates. Reparation awarded. Charles Weisse & Co. v. C. H. & D. Ry. Co., 29 I. C. C. 374.

(b) Carrier not justified in increasing factor where through rate exceeds the sum of the intermediates. California Nevada Lumber Rates, 28 I. C. C. 313, 315.

(c) Joint rate exceeded aggregate of intermediate. HELD, unreasonable and

reparation awarded. Florence Wagon Works v. S. Ry. Co., Unrep. Ops. ——, A106; New Roads Oil Mill & Mfg. Co. v. T. & P. Ry. Co., A120; Christy Fire Clay Co. v. M. P. Ry. Co., A125; Woolworth & Co. v. L. & N. R. R. Co., A132; Hobbs Hardware Co. v. A. T. & S. F. Ry. Co., A176; Ewing Coal Co. v. A. C. R. R. Co., A196; Clark Coal & Coke Co. v. C. T. H. & S. E. Ry. Co., A198; Weaks Iron Works & Supply Co. v. St. L. I. M. & S. Ry. Co., A201.

(d) Joint through rate found unreasonable to the extent that it exceeded the aggregate of intermediate rates. Reparation awarded. Waterman Lumber & Supply Co. v. T. & G. Ry. Co., Unrep. Ops. —— A269; Archer Daniels Linseed Co. v. C. M. & St. P. Ry. Co., A277; Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., A283; Stearns & Culver Lumber Co. v. L. & N. R. R. Co., A320; Lindsay Bros. v. G. R. & I. Ry. Co., A326; Hull Co. v. E. J. & R. Ry. Co., A340; French Battery & Carbon Co. v. L. S. & M. S. Ry. Co., A373; Hess v. U. P. R. R. Co., A385.

(e) Lower combination rate in effect on shipments of sewing machines from Dayton, O., to Columbia, Wiggins and Lucedale, Miss., than one assessed. HELD, unreasonable, and reparation awarded. Davis Sewing Machine Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. A236.

(f) Reparation awarded on basis of lower combination rate in effect on shipment of news print paper from Felts Mills, N. Y., to Richmond, Mich. Butler Paper Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A267.

(g) Joint through rates with high minimum on potatoes from Burnside, Tex., to New York, N. Y., found unreasonable to the extent that it exceeded aggregate of intermediate with varying minimum. Wagner & Sons v. Sugarland Ry. Co., Unrep. Op. A287.

(h) Reparation awarded on basis of lower combination of intermediate rates in effect than one applied on shipment of roofing felt, with roofing cement and nails, from Franklin, O., to Bogalusa, La. Patent Vulcanite Roofing Co. v. C. C. C. & St. L. Ry. Co., Unrep. Op. A306.

(i) Through rate found unreasonable to the extent that it exceeded the aggregate of intermediate rates. Complainant not having shown it was damages, reparation denied. Smith Mfg. Co. v. C. & N. W. Ry. Co., Unrep. Op. A318.

(j) Reparation awarded on basis of lower combination rate in effect than one applied. Curll v. C. & O. Ry. Co., Unrep. Ops. —— A347; Maine Spinning Co. v. B. & M. R. R., A350; Butler Paper Co. v. B. & A. R. R. Co., A372.

(k) Joint rates and minimum weight on potatoes from Lakeside, Tex., to Philadelphia, Pa., and Baltimore, Md., found unreasonable to the extent that they exceeded the aggregate of intermediate rates and minimum weights. Miller & Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A380.

(l) Joint through rate is usually lower than combination of intermediates. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C., 376, 377.

(m) Combination of the 11-cent class rates from Kalzer and Dean, Wash., thence 35-cent rates to Dickinson, N. D., unreasonable in so much as it exceeds 41.5 cents. Kroll Lumber Co. v. G. N. Ry. Co., Unrep. Op. A428.

(n) Rates from Lumberton, Miss., to Webster Groves, Mo., which exceed the aggregate of intermediates, not justified. Wells Lumber Co. v. G. & S. I. R. R. Co., Unrep. Op. A434.

(o) Rate found unreasonable in so much as it exceeded the combination of intermediates via another route. Warfield-Pratt-Howell Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A437.

(p) Defendant required to establish rates not to exceed combination of the through rate from St. Louis, Mo., to New Orleans, La., plus the local to Shreveport, La. Tusten Seed & Produce Co. v. V. S. & P. Ry. Co., Unrep. Op. A442.

(q) Joint through rate should not exceed the aggregate of the intermediates. Rockford Lumber & Fuel Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A446.

(r) The through joint rate should not exceed the combination of intermediates on earthen sewer pipe from Birmingham, Ala., to Lake Charles, La. Chattanooga Sewer Pipe & Fire Brick Co. v. A. G. S. R. R. Co., Unrep. Op. A450.

(s) Rates on lumber from Arkansas, Louisiana and Texas to Nebraska points found unreasonable in so far as they exceed the joint through rate to Lincoln or

Omaha plus the local rate to destination. Caddo River Lumber Co. v. C. & C. R. R., Unrep. Op. A455.

(t) Rates on motorcycles unreasonable from Springfield, Mass., to Spokane, Wash., in so far as they exceed the joint through rates, all-rail. Spokane Cycle & Supply Co. v. S. I. Ry. Co., Unrep. Op. A461.

(u) Rates on cresote oil, in drums. found unreasonable in so far as they exceed the combination of intermediates. Lee Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A499.

(v) Rates on corn from Boyden and Hornick, Iowa., and Elk Point, S. D., to Atchison, Kan., found unreasonable in so far as they exceeded the combinations of intermediate rates. Flanley Grain Co. v. M. P. Ry. Co., Unrep. Op. A503.

(w) Rates on structural iron from San Francisco, Cal., to Fallon, Nev., found unreasonable in so far as they exexceed the aggregate of intermediates. Nevada Hills Mining Co. v. S. P. Co., Unrep. Op. A526.

(x) Combination rate found unreasonable in so much as it exceeded the through joint rate subsequently established. Sharon v. C. V. R. R. Co., Unrep. Op. A532.

(y) Through joint rate from St. Louis, Mo., to Stolle, Ill., which exceeds the aggregate of the intermediate rates based on E. St. L. & C. Crossing, found unreasonable. Boeckeler Lumber Co. v. T. R. R. Asso. of St. L., Unrep. Op. A533.

(z) Carrier's agent misquoted that there was a joint rate. HELD, that the lowest combinations of intermediate not unreasonable. Kulzer v. G. N. Ry. Co., Unrep. Op. A540.

(aa) Complainant attacked the charges assessed on basis of a joint through rate of 33c on shipments of cotton seed meal from Helena, Ark., to points in Maine, Massachusetts and Vermont as unjust and unreasonable to the extent they exceeded 30½c, the combination of intermediate rates through Louisville, Ky. The shipments were originally consigned to complainant's order, Louisville, with the intent of reconsigning to points beyond, but while en route the carriers at Louisville were instructed to forward to the New England destinations. The through rate of 33c likewise applied on shipments through Cairo, Ill., Evansville, Ind., and Cincinnati, Ohio, though the combination of intermediates through Evansville was only 31½c. The combination of 30½c through Louisville was based on 11c to Louisville and 19½c beyond. Helena is one of a group of eastern Arkansas points accorded the 33c rate, and though service from Helena involves an expensive transfer by ferry across the Mississippi, the rate is only ½c higher than that from competing points east of the river. HELD, that the shipments were not handled so as to constitute separate and distinct shipments to and from Louisville, nor was the 33c rate shown to have been unreasonable per se. On the other hand, it appeared that the 11c rate to Louisville was so low as to be out of line with rates from all other points in the same general territory. Reparation denied. Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25.

(bb) Ordinarily a through or joint rate should not exceed the combination of intermediates applicable over the route of movement. The fact that it does will raise a strong presumption that it is unreasonable though such presumption is not conclusive; it may happen in exceptional cases that the through rate may properly be greater than the sum of the intermediates. When it exceeds the sum of intermediates the burden is on the carrier to defend such higher rates and rebut the presumption of unreasonableness. Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 27.

(cc) The Commission will seldom, if ever, accept a plea of clerical or typographical error in justification of a joint through rate in excess of the sum of intermediate rates. To do so would be but to invite the plea in all cases. The defense of error can be availed of only where the circumstances are so clear and convincing as to leave no possible doubt of the fact. Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 29.

(dd) Joint through fare in excess of the aggregate of intermediates; damages awarded. Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 356.

(ee) Combination rate on lumber from Marion, S. C., to Asheville, N. C., not found unreasonable as compared with lower combination via another route a factor of which was fixed by the South Carolina railroad commission. Alder-

man & Sons Co. v. A. C. L. R. R. Co., A-548.

(ff) Lower combination in effect on lumber from Marion, S. C., to Canton, N. C., than one assessed. Reparation awarded. Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548.

(gg) Rates on lumber from Wilmington N. C., to Greer and Taylors, S. C., higher than to Simpsonville and Greenville, S. C. HELD, unreasonable to the extent that they exceeded combinations based on Greenville. Reparation awarded. Alderman & Sons Co. v. A. C. L. R. R. Co., A-548.

(hh) Joint through rate on glass bottles from Chattanooga, Tenn. to Pulaski, Tenn., via an interstate route, found unreasonable to the extent that it exceeded the aggregate of intermediates based on Nashville, Tenn. Chattanooga Bottle & Glass Mfg. Co. v. N. C. & St. L. Ry. Unrep. Op. A-575.

(ii) Joint through rate on lumber from Ironton, Ohio, to Sault Ste Marie, Mich., found unreasonable to the extent that it exceeded the combination of intermediates. Reparation awarded. American Lumber & Mfg. Co. v. D. T. & I. Ry. Co. Unrep. Op. A-584.

(jj) Joint through rate on grain screenings from Minneapolis, Minn., to South Bartonville, Ill., did not permit milling in transit; higher combination, under which transit was permitted, not found unreasonable. Atwood-Stone Co. v. C. M. & St. P. Ry. Co. Unrep. Op. A-599.

(kk) Joint rate exceeded sum of intermediates. Held unreasonable and reparation awarded. Alderman & Sons Co. v. A. C. L. R. R. Co. Unrep. Op. A-548; Bass & Harbour Co. v. M. O. & G. Ry. A-628.

(ll) The fact that a lower rate existed from Remsen to Council Bluffs, Ia., via the Illinois Central railroad, is not sufficient proof that the combination of rates for a two-line haul via Sioux City was unreasonable. Reparation denied. Flanley Grain Co. v. C. B. & Q. R. R. Co. Unrep. Op. A-638.

(mm) Combination rate on lumber from Washington and Idaho, and on building material from Duluth, Minn., to Sutton, Glenfield, and Juanita, N. D,. a factor of which was a state rate. not found unreasonable as compared with subsequently established joint through rate. Reparation denied. Crane-Johnson Co. v. G. N. Ry. Co. Unrep. Op. A-640.

(nn) Combination of intermediates on broom corn from Higgins, Tex. to Lincoln, Neb., which was lower than joint through rate lawfully applicable, found unreasonable to the extent that it exceeded the subsequently-established rate. Reparation awarded. Lee Broom & Duster Co. v. A. T. & S. F. Ry. Co. Unrep. Op. A-650.

(oo) A through rate should normally be less than the sum of the locals. Application of Fonthill Gravel Co., Ltd. (Can. Ry. Comm.), File 18265.3.

(pp) Where a local rate for a short local haul is added to a rate for a considerable distance to make a through rate, the principle should be invoked that the local rate should be considered in connection with the entire haul. In other words, the through charge should bear a proper relation to the total distance involved. While distance is not the sole factor to be considered, it is manifest that the application of the full locals as parts of the through rate may be unreasonable and unjustly discriminatory. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 236, 237.

(qq) Joint through rates on salt from Hutchinson and other producing points in Kansas found unreasonable to the extent they exceeded the sums of the intermediates contemporaneously in effect to the various destinations. Reparation awarded. Sunderland Bros. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-705.

(rr) Combination rate on apples from Glasgow, Mo., to Necedah and Grand Rapids, Wis., found unreasonable because carrier has established a joint through rate via another route which should also have been established via route over which shipment moved. Miller & Co. v. Wabash R. R. Co., Unrep. Op. A-722.

(ss) Through rates on grain products from Leesburg, Ohio, to Marytown, W Va., higher than the combination of locals, found unreasonable and reduction ordered. Reparation not awarded. Dewey Bros. Co. v. B. & O. S. W. R. R. Co., Unrep. Op. A-738.

(tt) Complainant attacked the joint

commodity and class rates from St. Louis and defined territories to Lafayette, La., as exceeding the sum of the intermediates applicable on traffic via Baton Rouge La. The M. L. & T. R. R. & S. Co. thereupon attempted to close the Baton Rouge gateway by cancelling the interstate application of the mileage rates from Baton Rouge to Lafayette and other points on its line. The tariff making this cancellation was suspended, whereupon the tariff carrying the interstate application of a mileage scale of rates from Baton Rouge was cancelled; subjecting the traffic to New Orleans combination. This enabled New Orleans shippers to purchase Lafayette products, ship to New Orleans, and reship to interstate points for less aggregate charges than Lafayette must pay for identical shipments. HELD, (1) that since closing the Baton Rouge gateway would subject interstate traffic to unjust discrimination in favor of competing interstate traffic, the former mileage rates from Baton Rouge must be restored, except that 20 miles might be added for the Mississippi River transfer; and (2) joint rates from St. Louis and defined territories to Lafayette not found on the record to be unlawful, but case held open for necessary proof. Class Rates Between Stations in Louisiana, 33 I. C. C. 302.

(uu) Complainant attacked the joint through class rates on various articles in less than carloads from Memphis, Tenn., to Kessler, Lecompte, Grosse Tete, and Fordoche, La., as unreasonable to the extent that they exceeded the sums of the intermediate rates based on Port Allen or New Orleans, La. The joint first class rate to Kessler was $1.10, and to the other three destinations $1.37. The first class rate from Memphis to New Orleans and Port Allen was 45c; from New Orleans to Kessler, Grosse Tete, Fordoche, and Lecompte; 30, 40, 45, and 60c; and from Port Allen to the latter three points 32, 36, and 48. HELD that the joint through rates to Kessler were unreasonable to the extent they exceeded the combination on New Orleans, and that those to Lecompte, Grosse Tete, and Fordoche were unreasonable to the extent they exceeded the sum of the intermediates based on Port Allen. Reparation awarded. Memphis Freight Bureau v. St. L. I. M. & S. Ry., 33 I. C. C., 472.

(vv) Instances of through rates in excess of aggregate of intermediate rates, if found to exist, should be corrected. Milburn Wagon Co. v. A. A. Ry. Co., 32 I. C. C., 582, 589.

(ww) Joint through rate on logs from Searles, Brookwood and Brent, Ala., to Chattanooga, Tenn., found unreasonable to the extent that it exceeded the combination of Intermediates from Brent. Reparation to be awarded. Berry Lumber & Stave Co. v. L. & N. R. R. Co., Unrep. Op. A-771.

(xx) Through rates on lumber dressed in transit at point where no transit privilege applied were sums of the intermediates to and from transit point. Not found unreasonable. Meeds Lumber Co. v. A. C. Ry. Co., Unrep. Op. A-829.

(yy) Rates on wooden crossties from points in Mississippi to Chicago and Indianapolis, found unreasonable where in excess of sums of intermediates to and from Cairo and Thebes, Ill. Reparation awarded. Jeffries v. N. O. M. & C. R. R. Co., Unrep. Op. A-831.

(zz) Joint through rates on wooden crossties from points in Mississippi to Chicago, Ill.,\ and Indianapolis, Ind., found unreasonable where in excess of sums of the intermediate to and from Cairo and Thebes, Ill. Reparation awarded. Jeffries v. N. O. M. & C. R. R. Co., Unrep. Op. A-831.

(3a) Reparation awarded on marrocks, picks, sledges and crowbars from Wheeling, W. Va., to San Antonio, Tex., on basis of lower combination of intermediate rates than that charged. Peden Iron & Steel Co. v. S. P. Co. Atlantic S. S. Lines, Unrep. Op. A-869.

(3b) Rates on cottonseed meal from Jackson, Tenn., to Barron, Wis., not found unreasonable as compared with joint through rate from same point to Duluth, Minn., and Superior, Wis. Bartlette Co. v. M. St. P. & S. Ste. M. Co., Unrep. Op. A-887.

(3c) Rates on apples from Front Royal Va., to Jackson, Miss., exceeded combination of rates to Vicksburg, Miss., plus the local rate from Vicksburg back to Jackson. Reparation awarded. Wilson Produce Co. v. N. & W. Ry. Co., Unrep. Op. A-905.

(3d) Subsequent to movement of shipments of rosin from Mobile, Ala., to Louisville, Ky., reconsigned to points in c. f. a. territory, provisions of tariff were amended, and combination of rates to

and from Loulsville were charged. HELD, unreasonable. Case held open for proof. American Naval Stores Co. v. L. & N. R. R. Co., Unrep. Op. A-922.

(3e) Combination rates on fresh fish from Seattle, Wash., to St. Paul, Minn., by passenger train service and from St. Paul to Chicago and Philadelphia by express service found unreasonable to the extent that they exceeded through express rates. Case held open for proof. New England Fish Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-924.

(3f) Rate on prairie hay from Melissa, Tex., to Little Rock, Ark., not found unreasonable as compared with combination of intrastate rates based on Texarkana. Hughes & McCoy v. C. R. I. & P. Ry. Co., Unrep. Op. A-935.

(3g) Rates on apples from Carrollton, Mo., to Grand Rapids, Wis., found unreasonable to the extent that it exceeded the subsequently established joint through rate. Case held open for proof. Miller & Co. v. W. R. R. Co., Unrep. Op. A-942.

§15½. Rates Via Other Routes.

See Evidence, §47.

(a) Evidence that lower combinations were in effect via routes other than the one over which the shipments moved is not of itself sufficient basis for a finding that the joint through rates are unreasonable or unjustly discriminatory. Corporation Com'n of North Carolina v. S. Ry., 33 I. C. C., 487, 492.

(b) Complainants attacked the rates on the first six classes from central freight assn., Pittsburg-Buffalo, and eastern seaboard territories, and from Lynchburg, Va., to Greensboro, Highpoint, Winston Salem, Thomasville, Elkin, Kernersville, Siler City, Ronda, Charlotte, Salisbury, Lexington, and Mount Airy, N. C., (The North Carolina points), as unreasonable, discriminatory and in violation of the fourth section. RATES FROM OHIO RIVER CROSSINGS: No objection was raised as to rates in effect subsequent to June 20, 1914, but it was contended that the joint through rates effective prior thereto were unreasonable and discriminatory as compared with combinations based on Burkeville, Va. The joint through and Burkeville combination rates from Cincinnati were as follows: to Greensboro 93 and 90c; Lexington, 100 and 97c Salisbury, 100 and 98c; Charlotte, 100 and 99c; Winston-Salem 84 and 95c. It did not appear that any of the shipments on which reparation was claimed moved through Burkeville; and the tariff provided that joint rates where shown should take precedence of combination rates. HELD, that the joint through rates from Cincinnati and points related, to the North Carolina points, had not been shown unreasonable or discriminatory. Evidence that lower combinations were in effect via routes other than the one used was not sufficient basis for finding that the joint through rates were unreasonable or discriminatory. RATES FROM CENTRAL FREIGHT ASS'N TERRITORY: With the exception of those just considered, no joint through rates were published from this territory to the North Carolina points. Rates were constructed by combinations on the Virginia cities. Complainants contended that shipments unrouted by shippers and made prior to June 20, 1914, had been assessed unlawful rates in that the shippers had not been given the advantage of the Burkeville combination. The first class rates in effect prior to June 20, 1914, and the Burkeville combinations from Chicago were: to Greensboro 128, and 125; to Mount Airy, 138, and 134; to Salisbury, 135 and 133. The tariffs did not name rates from Burkeville to the North Carolina points, but did contain joint and local basing rates from Virginia cities applicable in the absence of specific rates. No shipments were routed via Burkeville. HELD that the Burkeville combinations were not the lawful rates; that the rates assessed on those shipments from points that did not have joint through rates were lawful and not shown to have been unreasonable or discriminatory. RATES FROM BUFFALO-PITTSBURG TERRITORY: Joint through rates were published from this territory and Youngstown, Ohio, to North Carolina points in certain instances higher than the Burkeville combinations. Joint rates from Pittsburg effective prior to Feb. 1, 1915, the existing joint rates and the Burkeville combinations were as follows: To Greensboro, 107, 104.5, and 112.5, to Mount Airy, 117, 114.5 and 121.5; to Salisbury, 114, 111.5, and 120.5. No shipments on which reparation was claimed moved through Burkeville. HELD that neither the joint through rates in effect at the time of filing the complaint, nor the existing rates had been shown to have been unreasonable or discriminatory. RATES TO WINSTON-SALEM: Complainant attacked the rates from

points in central freight ass'n. territory that did not have joint through rates, and from Buffalo-Pittsburg territory, on the ground that the local and not the proportional rates to the Virginia cities were previously used in making the combinations. Proportionals were the following differentials under locals: 5, 4, 3, 2, 2, 2. From Pittsburg to Winston-Salem the first class joint through rate prior to Feb. 1, 1915, was $1.07; the existing rate $1.04¼; and the combination on Roanoke, $1.06½. There was no evidence of shipments moving via Roanoke. HELD that complainant was not damaged nor entitled to reparation. RATES FROM LYNCHBURG: Reduced proportional rates had been published at date of hearing. No evidence was introduced warranting a finding that either they or the prior rates were unreasonable or discriminatory. Corporation Com'n of North Carolina v. S. Ry., 33 I. C. C. 487.

(c) Combination rate on apples from Carrollton, Mo., to Grand Rapids, Wis., found unreasonable to the extent that it exceeded joint through rate via another route. Case held open for proof. Miller & Co. v. W. R. R. Co., Unrep. Op. A-942.

§16. Reparation.

See Reparation.

(a) Carrier filed and posted tariff naming through rate to points on line which was not named as a party and had not concurred. Charges collected on basis of combination of intermediates. Damages awarded. Morton Salt Co. v. M. L. & T. R. R. & S. S. Co., 28 I. C. C 422, 424.

(b) Joint rate canceled because carriers failed to agree on divisions, leaving higher combination rate in effect. Joint rate subsequently restored. Carriers not having justified advances, reparation awarded. Pfister & Vogel Leather Co. v. B. & M. R. R., Unrep. Op. A238.

(c) Through rate on lumber from Brevard, N. C., to Gaffney, S. C., exceeded combination rate, factor of which was not applicable to interstate traffic. Through rate not having been found unreasonable, complaint dismissed. Alderman & Sons Co. v. S. Ry. Co., Unrep. Op. A251.

(d) Joint through rates with high minimum on potatoes from Burnside, Tex., to New York, N. Y., found unreasonable to the extent that it exceeded the aggregate of intermediates with varying minimum. Wagner & Sons v. Sugarland Ry. Co., Unrep. Op. A287.

(e) Joint rates and minimum weights on potatoes from Lakeside, Tex., to Philadelphia, Pa., and Baltimore, Md., found unreasonable in that they exceeded the aggregate of intermediate rates and minimum weights. Miller & Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A380.

(f) Reparation awarded on basis of combination through rate, reduced to equal through rate, one factor of which was not on file with the Commission. Smith Lumber Co. v. S. P. Co., Unrep. Op. A389.

(g) Where complainant makes no charge that the joint rate is unreasonable, but merely claims reparation on the theory that the shipments were or could have been reconsigned, the Commission will not award reparation. Godwin v. Y. & M. V. R. R. Co., 31 I. C. C. 25, 27.

(h) Combination rates on fresh fish from Seattle, Wash., to Chicago and Philadelphia via St. Paul, Minn., reduced to basis of through rate via Chicago after shipments moved. Case held open for proof. New England Fish Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-924.

V. TARIFFS AND CONSTRUCTION.

See Tariffs.

§17. In General.

(a) In the absence of a joint through rate, the lawful rate would have been a combination rate; and it was not necessary, in publishing a joint through rate to cancel or refer to the several factors which would have been applied in the absence of a joint through rate. Bartlett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A203.

(b) Where a tariff is a joint publication the carriers party to the rate in question are liable jointly for any damage that may result from an error in the tariff. Charles Warner Co. v. D. L. & W. R. R. Co., 32 I. C. C. 244, 246.

(c) Combination rates on coke from Bessemer, Ala., to Marshall, Tex., back hauled from Jefferson, Tex., under new bills of lading, not found unreasonable as compared with subsequently-established through rate. Marshall Car Wheel &

Foundry Co. v. T. & P. Ry. Co., Unrep. Op. A-929.

§18. Application of Proportional or Reshipping Rate.

See Facilities, §15; Proportional Rates.

(a) Before a lower transit tariff can be applied to a shipment through a transit point, it must appear that there is some relation between the inbound and outbound shipments; since an inbound shipment consumed or reconsigned at the transit point cannot be made the basis of transit shipment. G. R. & I. Ry. Co. v. United States, 212 Fed. 577, 585.

(b) An application of transit rates to shipments consumed or reconsigned at the transit point constitutes rebating. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 591.

(c) Whenever by any transit arrangement through rates are applied, they must be as of the date of the first movement of the shipment from the point of origin under such through rates. Washburn-Crosby Milling Co. v. B. & O. S. W. R. R. Co., Unrep .Op., A480.

(d) Whenever under a transit arrangement a through rate is applied, such through rate must be as of the first movement of the shipment from the point of origin under such through rate. La Junta Milling & Elevator Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A507.

(e) Principle of rate making which determines the measure of inbound rates on raw material by the compensation received for subsequent independent movements of outbound manufactured products not a correct one. Curry & Whyte Co. v. D. & I. R. R. R. Co., 30 I. C. C. 1, 12.

(f) Joint through fares between Atlanta, Ga., and Chattanooga and Nashville, Tenn., a factor of which was a 2c fare prescribed by the Georgia railroad commission, not found unreasonable. U. S. v. N. C. & St. L. Ry. Co., Unrep. Op. A-691.

(g) Joint through rates on salt in many cases exceed local or proportional rates from Kansas producing points to various junction points plus the local rates beyond. Found unreasonable and reparation awarded. Sunderland Bros. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-705.

§19. Breaking Transit.

See Interstate Commerce, §1; Facilities and Privileges, §18; Transportation, §11.

(a) Only substantial commercial and transportation reasons can justify a carrier in permitting a practice like reshipping, which admittedly is similar to that or reconsignment and from which shippers obtain similar benefits and results, while denying to other shippers who can not avail themselves of the reshipping arrangement the right of reconsignment. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C., 523, 531.

(aa) Transit under joint through rates was permitted at another point on defendant's line and was available to complainant. Charges on basis of sums of intermediates to and from point where privilege was not applied not found unreasonable. Meeds Lumber Co. v. A. C. Ry. Co., Unrep. Op. A-829.

(b) While shipment of dried pea beans from Fowler, Mich., to Keokuk, Iowa, was at Lansing, Mich., the transit point, new tariff became effective, and complainant was denied benefit of transit rate in effect at time shipment left Fowler. HELD, unlawful and reparation awarded. Isbell-Brown Co. v. G. T. W. Ry. Co., Unrep. Op. A-908.

(c) Charges on certain shipments of coal reconsigned to points short of original destination found unreasonable to extent they exceeded charges that would have accrued at the through rate to such points. Reparation awarded. Sunderland Bros. Co. v. C. & A. R. R. Co., Unrep. Op. A-875.

§20. Change in Rate While Shipment at Transit Point.

See Supra, §18, §19; Facilities and Privileges, §15.

(a) It was defendant's duty to collect charges on basis of local rates on barley to and from transit point after expiration of transit time limit. Charges on shipment from Minneapolis, Minn., to Chicago, malted at Kewaskum, Wis., not shown to have been unreasonable. P. M. & O. Ry. Co., Unrep. Op. A-808. Rosenheimer Malt & Grain Co. v. C. St.

§20½. Concurrences.

(a) The mere insertion in the tariff of an erroneous concurrence number did not invalidate the rates shown therein. Bartlett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A203.

§22. What is Legal Rate.

See Absorption of Charges, §5 (b); Basing Points and Lines, §2 (j); Legal Rate; Reconsignment, §4 (b), §9 (b); Tariffs, 7 (k).

(a) Through rate with transit privilege at East St. Louis found to have been applicable on shipments of corn from points in Illinois to Louisville, Ky., instead of combination rate. Reparation awarded. Security Warehouse & Elevator Co. v. C. & A. R. R. Co., Unrep. Op. A221.

(b) Rule that carload freight for delivery to terminal carriers within Chicago switching district will not be delivered until freight charges are paid, not applicable where joint through rate is in effect. Miller & Co. v. P. M. R. R. Co., Unrep. Op. A309.

(c) Under section 6 of the Interstate Commerce Act as amended by the Hepburn Act of June 29, 1906, a carrier who has never filed with the Commission a through rate to a foreign port, cannot make a through rate to such port. Hamlen & Sons Co. v. I. C. R. R. Co., 212 Fed. 324, 326.

(d) In the absence of a joint through rate the lower combinations of intermediate rates should apply. Sioux City Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A401.

(e) Combination of intermediate rates should apply in the absence of a joint rate. Kroll Lumber Co. v. G. N. Ry. Co., Unrep. Op. A426.

(f) Through mistake, complainant consigned car to Birmingham instead of Montgomery, Ala. HELD, complainant not entitled to the through rate to Montgomery because of its own carelessness. Illinois Leather Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A497.

(g) In the absence of joint through rates, a carrier is, under section 6 of the Act, required to use local rates named in tariffs on file with the Commission in constructing through rates. Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C. 142, 143.

(h) Where a specific through rate exists that rate is the only lawful rate for a through movement, and the duty is incumbent upon the carrier to make such through rates as do not violate the law. It is the duty of the carrier, in case any through rate in contemplation violates the provisions of the fourth section, to protect such deviations by application to the Commission and not to file or publish any such rate until favorable action on the application has been taken by the Commission. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C. 247, 254.)

(i) Shipments of fruit baskets held to be through from points of origin to Horatio, Ark., and rebilling at Memphis did not suffice to make them shipments first to Memphis, and then new shipments to Horatio, subject to the local rates from Memphis to Horatio. Wells-Higman Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-752.

(j) Rates on fruit baskets from Traverse City and St. Joseph, Mich., billed to Memphis, Tenn., and rebilled by complainant's agent to Horatio, Ark., not found unreasonable. HELD, that the rebilling at Memphis did not make them new shipments subject to the local rates thence to Horatio. Wells-Higman Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-752.

(k) When a commodity has been delivered to a common carrier, to be transported on a continuous voyage or trip to a point beyond the limits of the state where delivered, the character of interstate or foreign commerce attaches thereto, and it is immaterial whether the shipment be made on a through bill of lading, or upon a bill or bills issued for transportation between intrastate points. Bailey v. M. P. Ry. Co. (Mo., 1914), 171 S. W. 44, 46.

(l) Complainant attacked the charges collected for the transportation of mine-run bituminous coal from Springfield and Riverton, Ill., to Mooar, Ia., as excessive, unreasonable and discriminatory. The Wabash R. R. tariff named a through rate of 90c per ton between the points involved; but the C. B. & Q. Ry. was not a party to the tariff, and combination rates of $1.24, based on the intermediates, were accordingly charged.

HELD, that complainant was justified in relying on the 90c rate published by the Wabash R. R. as the lawful rate, and was entitled to a refund of the difference between the charges which would have accrued at that rate and those collected. Reparations awarded. DuPont De Nemours Powder Co. v. Wabash R. R., 33 I. C. C., 507.

(m) The lawful rate for a through movement is the specific through rate wherever such rate exists, and the application thereof can not be defeated by the practices of diversion, reconsignment, or reshipment. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C., 523, 527.

(n) The nature and character of traffic determines whether it is a through or local movement. S. P. Co. v. U. S., 35 Sup Ct. 573, 574; 237 U. S. 202; 59 L. ed.

(o) State rates not on file with the Commission cannot be applied in making combination rates on interstate traffic. Rates on Grain and Grain Products, 33 I. C. C. 452, 454.

(p) If no specific rate from point of origin to destination of a through shipment is provided and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment. Corporation Com'n of North Carolina v. S. Ry., 33 I. C. C. 487, 494.

(q) Reconsignment provided for only on basis of the "through rate," and cannot be used to defeat the through rate. Less Carload Freight Reconsignment Privileges, 32 I. C. C. 85, 86.

(r) Practice of consigning shipments to Vidal, Cal., under intrastate rates and reconsigning thence to interstate destinations thereby defeating the through rate is unwarranted and withdrawal of reconsignment justified. Less Carload Freight Reconsignment Privileges, 32 I. C. C. 85, 86.

(s) A through route does not necessitate joint rates, but may be open to traffic upon the payment of the combination of locals. Eastern Shore Development S. S. Co. v. B. & O. R. R. Co., 32 I. C. C. 238.

(t) An existing specific through rate is the only lawful rate for a through movement, and the duty is incumbent upon the carrier to make lawful through rates. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247 254.

(u) Through rates on lumber dressed in transit at point where no transit privileges applied were sums of intermediates to and from transit points. Not found unreasonable. Meeds Lumber Co. v. A. C. Ry. Co., Unrep. Op. A-829.

(v) Thru rate for long distances should not be made by adding to the basing-point rate either the full local or relatively higher differentials. Altha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919.

(w) The lawfully established interstate rate applies on shipments first billed to an intermediate point within the state of origin and then rebilled to the intended destination in an adjoining state, this plan having been devised for the sole purpose of getting the traffic through to the interstate destination at the rates applicable to and from the intermediate point, the sum of which was materially less than the through rate for the through service. Kanotex Refining Co. v. A. T. & S. F. Ry., 34 I. C. C., 271, 276.

(x) Complainant shipped petroleum oil from its refinery at Caney, Kans., to Woodward, Okla. To take advantage of the lower Kansas petroleum rates and secure a rate substantially lower than the interstate rate of 35c, complainant billed its tank cars to its agent at Kiowa, Kans., a point near the state line, where they were rebilled to Woodward. The cars moved as a continuous shipment, subject only to the delay incident to rebilling. Defendant demanded under charges based on the through interstate rate from Caney to Woodward; while complainant attacked the rate as unreasonable and discriminatory. HELD: (1) that defendant was in duty bound to refuse to continue rebilling from Kiowa and to demand payment of undercharges since where the through interstate rate between two points is higher than the aggregate of intermediates any plan of first billing to an intermediate point a shipment intended to reach a destination beyond is simply a shift to evade the lawful through rate. Kanotex Refining Co. v. A. T. & S. F. Ry., 34 I. C. C. 271.

§23. Procedure.

See Long and Short Hauls, §1 (c), (d); Procedure Before Commission, §2 (e).

(a) Complainant attacked the local rate of 19c on shipments of apples, C. L., from Memphis, Tenn., to Little Rock, Ark., applicable on through shipments from the Cumberland Valley region of Pennsylvania and Virginia, as unreasonable and discriminatory compared with a proportional rate of 13c from Memphis to Little Rock on like shipments from western New York points. The apples coming from both territories were of substantially the same grades and values, packed in the same manner, and the transportation service between Memphis and Little Rock was identical. There were no joint through rates on apples from New York state to Little Rock, the through rates being the combination of intermediate rates to and from the Mississippi River crossings. The rates from the New York region were 25c to St. Louis, 25c to Cairo, and 35c to Memphis, and the commodity rates from those points to Little Rock were 27c, 23c and 19c, respectively, yielding combination rates of 52c via St. Louis, 48c via Cairo, and 54c via Memphis. If these combinations were applied, the traffic would all move via Cairo, consequently the carriers had equalized the combinations via the three gateways by publishing proportional rates of 23c from St. Louis and 13c from Memphis. As to shipments from Cumberland Valley points, the combinations were 59c via St. Louis, 56c via Cairo, and 54c via Memphis, making it unnecessary for carriers operating from Memphis to publish proportionals. No evidence was introduced tending to show the 19c factor to be unreasonable per se. HELD, that it would be unjust to disturb a particular factor of the through rate, except upon a record which would warrant a finding as to the reasonableness of the entire through rate, or of the particular factor thereof under consideration. Complaint dismissed. Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co., 28 I. C. C. 529.

(b) Through routes cannot be ordered in when complaint does not contain prayer therefor Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 592.

(c) If the bona fide object of the proceeding is to secure reasonable joint rates over the trunk lines and the terminal railroad, for the benefit of the latter's shippers, then the complaint should be brought in the name of the shippers as complainants, and the terminal railroad should be named as a defendant along with the trunk lines. Manufacturers' Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 105.

VI. RIGHT TO WITHDRAW.

§24. In General.

See Supra, §9; §15 (tt); Advanced Rates, §5 (2) (v), §7 (6), §13 (d); Explosives, (g); Water Carriers, §6 (o).

(a) In tariffs under suspension the I. C. R. R. sought to cancel its proportional or reshipping rates on grain and grain products from St. Louis, Mo., and East St. Louis and Madison, Ill., to Eastern Trunk Line Territory. Protestant, who operated a mill at Marine, Ill., a local station on the I. C. R. R., 26 miles from East St. Louis, besides opposing the proposed tariff cancellation, also asked the establishment of milling-in-transit arrangement at Marine. Reshipping rates on flour from East St. Louis to destinations in Eastern Trunk Line Territory ranged from 13.5c to 21.7c, and in divisions, the I. C. R. R. received from 3.5c to 5c for its haul of 290 miles to Chicago, yielding approximately from 2.8 mills to 5 mills per ton-mile, without taking into account the bridge toll at East St. Louis, which it was compelled to absorb. Respondent was a north-and-south line, and desired to withdraw from the grain traffic on account of the low revenue derived from the transportation. It appeared the rate on wheat from Kansas City and Trans-Missouri territory to Marine was the same as the rate to St. Louis and East St. Louis; and that the proportionals on flour and other grain products moving east by the I. C. R. R. were the same from Marine as from rate-breaking river points. No charge was contemplated in that adjustment, and protestant was on an equal footing with his St. Louis competitors. But to obtain the benefit of the reshipping rates east, grain must be forwarded from territory west of St. Louis, and not purchased in St. Louis. Protestant had an elevator at St. Louis, and the granting of milling-in-transit privileges would enable him to supply the mill from the elevator. HELD, that respondent had justified its cancellation of proportional rates on grain and grain products from St. Louis, East St. Louis and Madison to eastern destinations involved. Order of suspension vacated. Under the present adjustment Marine is a rate-breaking point, and the total transporta-

tion charge does not exceed that obtaining at St. Louis and East St. Louis. It does not, therefore, suffer undue discrimination from the lack of a transit privilege. Rates on Grain and Grain Products, 30 I. C. C. 16.

(b) A suspended tariff canceled a joint rate on marble from Rutland Railroad stations to New York, routed White Creek, N. Y., Troy, N. Y., via B. & M. R. R. and New York City via Murray's Line. The respondent Rutland R. R. has in effect a joint rate from stations on its line to New York City via Chatham and N. Y. C. & H. R. R. R. This latter route gave the respondent approximately 59 miles additional haul, with a through route as direct as the route under the canceled tariff, while the rate is the same for either route. HELD, the service to the consignee being identical under both rates and the carrier which has traffic in its possession having the right to handle it by its own line as far as it can, unless the public interest will thereby suffer, the respondent is within its rights in canceling the joint rate over the route by which it received the shorter haul. Suspension vacated. Marble Rates from Vermont Points, 29 I. C. C. 607.

(c) Certain carriers serving the states of Oregon and Washington proposed to close established routes to certain traffic, particularly traffic in wool and lumber. The proposed cancellations fell into four groups, the carriers seeking to justify their course upon different grounds in each case. Protestants denounced this action as designed to limit markets and distribution, create a monopoly of traffic, and destroy the right of shippers to control the routing of their freight. **Wallula Gateway.**—It was proposed to close this route to wool passing from local points on the O.-W. R. & N. Co. to the east, over the Northern Pacific R. R. Three routes to the Missouri River would still remain open: The U. P., G. N., and C. M. & St. P. R. Rs., in delivering to either of which the O.-W. R. & N. Co. would get a longer haul than in moving the traffic by way of Wallula and the Northern Pacific R. R. The distances to Chicago from Arlington, a typical point on the O.-W. R. & N. Co., were by the N. P. Ry., 2,175 miles; G. N. Ry., 2,186 miles; U. P., 2,149 miles, and C. M. & St. P. R. R., 2,092 miles. Cancellation of the Wallula gateway would curtail the available routes through the Great Lakes; but the same rate applied by the boat lines as by all-rail routes to the East, and the same rate applied at Duluth as to points east thereof. For five years practically no wool had passed through the gateway. HELD, that where a line originates freight and is in position to transport it to destination over its own rails and by the shortest route, it cannot be compelled to maintain a through route with another carrier, but may insist upon conserving to itself the long haul. Order of suspension vacated. **Silver Bow, Spokane and Butte Gateways.**—The second group of cancellations involved eastbound rates on lumber and forest products from originating mill points on other lines, through the above gateways to consuming points on the Union Pacific system. The cancellation would involve the application of the combination of locals through the gateways, resulting in an increase of from 4c to 15c, which would exclude lumber originating on other lines from local markets of the Union Pacific system. The rates through the Spokane, Silver Bow and Butte gateways applying to all territory tributary to the G. N. Ry., the N. P. Ry., and the C. M. & St. P. Ry., respectively, became effective at a time when the U. P. R. R. had very little available timber. But having by the extension of the O.-W. R. & N. Co., developed mills sufficient to supply all markets on its lines with lumber, it now contended for the right to exclude mills located on other lines from access to markets on its lines. HELD, that the Union Pacific system had failed to justify the advance proposed in lumber rates from mill points on other lines. **Colorado Gateways.**—The third group of proposed tariffs sought the cancellation of through routes and joint rates via Colorado gateways on all traffic from points on the O.-W. R. & N. Co., destined to the Missouri River and beyond, and traffic in the opposite direction; routes and rates between the gateways and the Missouri River to remain unchanged. The Union Pacific offered the shortest route between the Missouri River and points local to its lines in Oregon and Washington, or on the lines of its subsidiaries, the O.-W. R. & N. Co., and the Oregon Short Line; and for this reason claimed the right to refuse through route and joint rate privileges. Such action would, among other ton. While the original case was pending, the respondent companies likewise attempted a cancellation of their joint

rates and a closure of their through routes to Milwaukee via the Grand Trunk and car ferry. HELD, that conditions surrounding the transportation of coal to Milwaukee via the Grand Trunk were not shown to be materially different from those obtaining via the P. M. R. R.; present routes to be maintained, but the proportional rates might be increased not to exceed 10c per ton. Order of suspension vacated. Rates on Coal to Milwaukee and Other Wisconsin Points, 28 I. C. C. 527.

(d) The Commission considered the proposed cancellation of joint through rates between the St. L. & S. F. R. R. and the K. C. & M. R. R. Rogers, Ark., is 334 miles south of St. Louis, both being on the main line of the St. L. & S. F., between St. Louis, Mo., and Dallas, Tex. The K. C. & M. R. R. runs southwest from Rogers to Siloam Springs, Ark., 30 miles. From Cafe Springs, 10 miles southwest of Rogers, a branch of the K. C. & M. R. R. runs to and connects with the St. L. & S. F. R. R. at Fayetteville, 21 miles. A second spur of the K. C. & M. R. R. branches from the main line 2 miles west of Rogers. A through route is thus afforded to all points on the K. C. & M. R. R. in connection with the St. L. & S. F. R. R. to Rogers, and the K. C. & M. R. R. beyond. Siloam Springs is also a junction point with the K. C. S. Ry., which in conection with the M. K. & T. Ry. forms another through route to all points on the K. C. & M. R. R. Traffic from St. Louis to points on the K. C. & M. R. R. may be routed via the St. L. & S. F., through Rogers, Ark., thence southwest via the K. C. & M. R. R., or via the M. K. & T. Ry. and the K. C. S. Ry. to Siloam Springs, and thence northeast via the K. C. & M. Ry. to the same destinations. The K. C. S. Ry. made the rate to Siloam Springs, both from Kansas City and St Louis, and that route was available before the K. C. & M. Ry. was constructed. In meeting the rates of the K. C. S. Ry., the St. L. & S. F. R. R. extended them only from competitive points on the K. C. & M. Ry. The joint through class rates from St. Louis to Siloam Springs were $1.04, 84c, 69c, 55c, 41c, 45c, 35c, 29c, 26c and 23c, respectively, for the ten numbered and lettered classes, and the increases which would be affected by the substithings, curtail the free reconsignment of shipments of apples from the Oregon territory, and would deprive Willamette Valley lumber dealers of a profitable market in the sale of their produce to the prairie lines. As to westbound traffic, the Union Pacific contended that, under secion 15 of the Act, the Commission was without power to keep the lines open west to the Colorado gateways in the absence of protest on their part. HELD, that an order should issue, making permanent the suspension of tariffs seeking to cancel joint rates through the Colorado gateways. **Puget Sound Boat Lines.**—The C. M. & St. P. Ry. arranged with shingle mill boats, establishing joint rates on shingles from their mills on the west side of the Sound to the east. The rates were 5c higher than terminal rates applying from mills located on rail lines, and were divided by giving the boat line 12½c per 100 lbs. To meet this situation the G. N. Ry. agreed upon joint rates on shingles with other boat lines, not financially connected with shingle mills, giving the boat lines 7½c per 100 lbs. out of the terminal rates. In the latter case the shingles were hauled by the boat lines to Edmonds, where joint billing was made out, and then, without unloading, the boat proceeded to Seattle and delivered the shingles to the G. N. Ry., which then transported them through Edmonds to the East. The boat lines made no pretense of being interstate carriers, beyond the mere concurrence in the rates. HELD, that the waste of transportation in hauling traffic to Edmonds and back was reprehensible. Order of suspension vacated. Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609.

(e) Carrier permitted to discontinue through route voluntarily maintained for four years which embraced substantially less than the entire length of its railroad. Rates on Cottonseed and Its Products, 28 I. C. C. 219, 221.

(f) In 27 I. C. C. 223, the Commission considered the proposed closing of routes and withdrawal of rates on soft coal from West Virginia and Kentucky mines via the C. & O. and K. & M. Rys. to Milwaukee, Manitowoc and Kewaunee, Wis., for shipment to points beyond. The delivering line was the P. M. Ry. and car ferry. It was ordered that the routes be maintained, with permission to increase the rates not to exceed 10c per tution of locals were, respectively, 30c, 27c, 22c, 23c, 15c, 17c, 14c, 10c, 8c and 5c. The commodity rates to points on

the K. C. & M. R. R. being the junction Point for Rogers rates extended to and blanketed over that line, the increase in those rates resulting from the proposed cancellation would be the amount of the locals from Rogers. Siloam Springs is 364 miles from St. Louis via the St. L. & S. F. R. R., and K. C. & M. R. R., and 461 miles via the K. C. S. Ry. and connections. From St. Louis to Rogers, the junction point with the K. C. & M. Ry. Co., the class rates were but 96c, 78c, 64c, 50c, 38c, 42c, 32c, 26c, 23c and 20c for a distance of 334 miles, being controlled by rates to Fort Smith of $1.10, 95c, 75c, 59c, 44c, 46c, 39c, 34c, 30c, and 25c for a distance of 416 miles. The K. C. & M. R. R. was not built for any appreciable volume of tonnage in sight, but merely upon such promise as a sparsely settled locality, producing principally fruits, berries and cattle, might hold out. It owned 4 locomotives, 5 passenger cars, 5 flat cars, 1 motor car, and 1 caboose; the total amount of traffic was insignificant, and equipment for through shipments originating on its line was furnished by the Frisco. The K. C. & M. Ry. system included a branch line to Fayetteville, on the line of the St. L. & S. F. Ry. No industries being located on the K. C. & M. Ry. at that point which were not also served by the St. L. & S. F. Ry., the latter refused to switch for the K. C. & M. Ry. to industries which were located on the St. L. & S. F. tracks only. The K. C. & M. Ry. thereupon provided for free drayage to such industries; whereupon the St. L. & S. F. Ry. proposed the cancellation of joint rates. HELD, that assuming the local rates of the St. L. & S. F. Ry. to Rogers to be reasonable, that carrier should not be required to shrink them on through traffic in absorption of the local rates of the K. C. & M. R. R. beyond that point. Because it has voluntarily absorbed the full charge of the K. C. & M. Ry. on commodities heretofore is no reason for requiring a continuance of that practice. Much less should it be required to participate in joint rates to Fayetteville, one of its own stations. The St. L. & S. F. Ry., should, however, continue to participate in through routes and joint rates to K. C. & M. Ry. local points on a reasonable basis above that applicable to Rogers. Kansas City & Memphis Ry. Co. Rate Cancellation, 28 I. C. C. 640.

(g) The Commission considered proposed tariffs of the O. W. R. & N. Co., providing for the cancellation of through rates on lumber and other forest products shipped via Plummer, Idaho, in connection with the C. M. & St. P. R. R. to destinations on or east of the Missouri River. The main line of the O. W. R. & N. Co. runs south from Seattle, Wash., through Tacoma to Portland, Ore., thence east to Umatilla, and from there southeast to Huntington, Ore., where it connects with the O. S. L. The latter connects with the U. P. R. R. at Granger, Wyo., the three lines forming a through route between the Pacific coast and the Missouri River. From Pendleton, intermediate, Umatilla and Huntington, line of the O. W. R. & N. Co. runs northeast, serving southeastern Washington and northern Idaho, and at Plummer it connects with the C. M. & St. P. R. R. The suspended tariff sought to limit the application of through rates to the former route on forest products from points on the O. W. R. & N. Co. to destinations on, south, or east of the line of the C. M. & St. P. R. R. from Omaha, Neb., to Chicago, Ill., except lake-and-rail routes; and from points on the O. W. R. & N. Co. east of Pendleton, Ore., to destinations on or east of the line of the C. M. & St. P. R. R. from Duluth, Minn., to Des Moines, Iowa. The effect would be to increase rates to some extent on or east of the latter line. Chicago is approximately 1,845 miles from Plummer and 1,887 miles from Huntington. Pendleton is 2,063 miles from Chicago via Plummer and 2,060 miles via Council Bluffs. Elimination of the Plummer gateway would be accompanied by car shortage only during heavy movement of grain in the fall, when there would be shortage irrespective of such elimination. Only about 1 per cent of protestant's output moved via Plummer. But before such through rates became effective the error was corrected by the tariff under suspension. HELD, that as to Plummer respondents should not be required to maintain through rates on forest products to points involved to which the rates are not higher via Council Bluffs. Ordered, that respondents' tariffs be amended to conform hereto and that thereupon the order of suspension be vacated. Lumber Rates from North Pacific Coast Points, 30 I. C. C. 111.

(h) Propriety of cancellation of joint through rates to be determined in view of facts and circumstances of each case. Rates on Green Fruits from Idaho, etc., 29 I. C. C. 650, 651.

(i) The Commission considered the proposed cancellation of through routes and joint rates on lumber from Arkansas and Louisiana points to central freight association and eastern trunk line territories via East St. Louis, Ill., and the I. S. Ry. The carriers mentioned had agreed on these rates with the St. L. I. M. & S. Ry. and the St. L. S. W. Ry. The B. & O. R. R., N. Y. C. R. R., and Pennsylvania lines being obliged to act as delivering carriers under standing cincurrences. The joint through rate through Cincinnati to Pittsburg, a representative destination point, had recently been increased from 33 to 331-2c. The distances through the three gateways was substantially the same. HELD, that respondents had justified the cancellation proposed. Order of Suspension vacated. Lumber Rates, 33 I. C. C. 322.

(j) The Commission considered the proposed withdrawal of reshipping rates on grain and grain products from Milwaukee, Wis., via Chicago, Ill., and Manitowoc, Wis., to points in trunk line and central freight ass'n territories. The base reshipping rates from Chicago, Milwaukee and Manitowoc to New York City were on domestic grain 16.8c, export grain 13.7c; on domestic grain products, 17.5c; export 15.8c. Rates to other points in the territories involved were based on these rates. The reshipping rates were divided by deducting 3c for terminal charges at the eastern destination and according the western lines 10 per cent of the remainder. If the reshipping rates from Milwaukee to New York were withdrawn, local rates would apply as follows: On grain-domestic, 21.8c for export, 18,7c; on grain products-domestic, 22.5c for export 20.8c. On grain brought to Milwaukee, Manitowoc, and Chicago, with certain exceptions the rule was to make the rate the same. Reshipping rates would still be applicable via the Michigan lines running car ferries, and break-bulk boats to Milwaukee and Manitowoc, but these lines would not have been able to handle all of the grain traffic. In 1913, some 3,500,000 bbls. of flour were forwarded from Milwaukee; 60.2 per cent via the lake, 17.1 per cent via break-bulk boats, 10 per cent via all-rail routes, and 12.6 per cent via car ferry. The eastern carriers have as much revenue on shipments from Milwaukee as on those from Chicago. Freight rates on traffic in general from Chicago, Milwaukee, and Manitowoc were the same to points in trunk line territory. To points in central freight ass'n territory they were the same via direct lines, but higher from Milwaukee via Chicago than from Chicago. The first class rate from Chicago to Toledo, Ohio, was 38.9c; Milwaukee to Toledo via Chicago, 45.2c; Chicago to Cleveland, Ohio, 43.1c; Milwaukee via Chicago to Cleveland, 47.3c. The local rate from Milwaukee to Chicago was 3c; to Manitowoc, 6.5c. HELD, (1) that withdrawal of reshipping rates to points in trunk line territory, including Buffalo and Pittsburg, had not been justified; (2) that withdrawal thereof to points in central freight ass'n territory was justified; and (3) that the proposal to withdraw was not an effort to retire from through route and joint rate arrangements which respondents P. M. R. R., and G. T. Ry. might not lawfully be required to establish if they did not already exist, but was simply an effort to increase rates via through routes which would still be open at higher joint rates. Grain Rates from Milwaukee, 33 I. C. C. 417.

(k) There is force in the argument that a carrier should not be required to remain party to a through route and joint rate under conditions which would preclude the right to require the establishment of such through route and joint rate if it did not already exist. Grain Rates from Milwaukee, 33 I. C. C. 417, 424.

(l) The Commission considered the proposal to cancel joint rates on grain and grain products between Oklahoma points and points in Nebraska and Kansas, increases from ½c to 13½c per 100 lbs. Existing joint rates were equivalent to rates in effect from Omaha or Kansas City to Missouri and Oklahoma points. Thus, to Oklahoma City from Omaha, Neb., Belleville, Kans., Kansas City, Mo., and Hutchinson, Kans., for distances of 575, 622, 381 and 451 miles, existing rates on wheat were 24.5, 24.5, 20 and 20c, yielding 8.52, 7.88, 10.50 and 8.87 mills per ton mile, and proposed rates 24.5, 27.5, 20, and 23.25c, yielding 8.52, 8.84, 10.50, and 10.31 mills. Rates from Omaha and Kansas City were made over a single line. Application of combination rates from Kansas Junctions would result in

many inconsistencies; viz; from Manhattan, Kans., to Vinita, Okla., 320 miles, the proposed rate of 21c would yield 13.1 mills per ton-mile, while from Marion, Kans., to Snyder, Okla., 306.1 miles, a rate of 31c would yield 20.3 mills per ton-mile. The Kansas intrastate two-line rate for 340 miles was 16½c; the Oklahoma two-line rate 17½c; and the Kansas-Oklahoma interstate one-line rate 20c. HELD that the carriers had failed to justify the proposed application of combination rates, and that there was need for a continuance of joint rates between the points involved. Cancellation of proposed tariffs directed. Rates on Grain and Grain Products, 33 I. C. C. 452.

(m) Cancellation of through rates on bauxite ore from Bauxite, Ark., via East St. Louis, Ill., to Chicago Heights, Ill., justified. Routing of Bauxite Ore to Chicago Heights, Ill., Unrep. Op. A-842.

(n) Cancellation of joint through rates on grain and grain products from points in Iowa, Minnesota and South Dakota to points in Kansas and Nebraska, leaving higher combinations in effect, justified. Rates on Grain and Grain Products from St. Paul, Minn., and Other Points, to Stations in Kansas, Nebraska, and Other States. Unrep. Op. A-938.

(o) Cancellation of application of the Chicago basis of class rates from Porter, Crocker, and McCool, Ind., to points in Iowa, Minnesota, and South Dakota, leaving higher combinations in effect, justified. Class Rates from Porter and Other Stations in Indiana, Unrep. Op. A-940.

(p) Cancellation of joint through rates on farm wagons and trucks from Fort Smith, Ark., to points in Oklahoma, and establishment of rates via another route equal to rate cancelled, justified. Rates on Wagons from Fort Smith, Ark., to Stations in Oklahoma, Unrep. Op. A-943.

(q) Cancellation of joint through rates on lumber, ties, and other forest products from points in Louisiana to points in Texas, due to carriers inability to agree as to divisions, not justified. Rates on Lumber from Points in Louisiana to Points in Texas, Unrep. Op. A-947.

(r) Proposed cancellation of through routes and joint rates on coal from Sorento, Panama, and Coffeen, Ill., to stations on the lines of the C. M. & St. P. Ry., in the northwest, not justified. Illinois-Minnesota Coal Rates, Unrep. Op. A-962.

(f) Restriction of routing up to Kansas City, Mo., leaving applicable present rates via all lines east, justified. Cancellation of Routes in Connection with Wool and Mohair to Eastern Points, Unrep. Op. A-844.

VII. DUTY TO FURNISH FACILITIES.

§25. In General.

See Cars.

(a) The obligation to furnish cars for transportation over through routes composed of two or more carriers is a joint obligation, and rests upon all carriers participating in the route. Lumber Rates Through Ohio River Crossings, 29 I. C. C. 38.

(b) Each carrier subject to the Act is charged with the duty of furnishing cars to industries located upon its line. In case of through routes, the obligation to furnish cars for shipments to points upon lines of its connections is joint with such connections. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 506.

(c) It cannot be presumed that carriers composing a through route would fail in their duty to furnish equipment. Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621.

(d) Closing certain through routes on lumber in the northwest and cancelling joint rates relating thereto, may be in some instances permitted and in other instances not permitted. Lumber Rates from Oregon and Washington, 29 I. C. C. 609.

(e) Where through routes exist, obligations to furnish cars is joint upon all carriers therein. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 690.

(f) Complainant desired to ship cedar poles in carloads from Redmond and Kenmore, Wash., on the N. P. Ry., 47 and 20 miles from Seattle to Rowena and Dalles, Ore., respectively, on the O. W. R. & N. R. R. The N. P. Ry. connected with the latter line both at Seattle and at Portland, Oreg., 185 miles south of Seattle, and the combination rate via Seattle was 19c from Redmond and 18c from Kenmore, and via Portland 25c from Redmond and 23c from Kenmore. The N. P. Ry. to preserve the long haul, re-

fused to furnish its cars unless complainant would ship via Portland. Complainant did so and asked reparation. HELD, that the action of the N. P. Ry. subjected complainant to damages, measured by the difference between the aggregate rates paid and the aggregate rates applicable via Seattle. Reparation awarded. Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C. 142.

(g) The complainant sought the establishment of joint reshipping carload rates by the Wabash R. R. in connection with the C. & A. R. R. on wheat, corn and articles taking the same rates, from Omaha and South Omaha, Neb., and Council Bluffs, Ia., via Mexico, Mo., to certain stations on the main line of the Chicago & Alton, and to all south branch stations of the Chicago & Alton from Mexico to the Missouri River. The complaint sought the establishment of joint rates to these intermediate main-line stations which shall be no higher than the joint rates now in effect to the Mississippi River crossing. Prior to the hearing reasonable joint reshipping rates were published to the south branch points. It appeared there was reasonable necessity for joint rates via Mexico to the main-line stations of the C. & A. R. R. in Missouri. HELD, joint reshipping rates to the main-line stations of the Chicago & Alton Railroad Company between Mexico and the Mississippi River have been shown to be necessary and proper, and should be published, taking the rate, 9c on wheat and 8c on corn, to the Mississippi River as a maximum. Reparation awarded on certain shipments to south branch stations. Omaha Grain Exchange v. C. & A. R. R., 32 I. C. C. 597, 601.

(h) The statute requires that connecting carriers shall provide reasonable and equal facilities for the interchange of freight. Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660, 662.

(i) To furnish cars is an obligation that rests on all the carriers parties to joint rates. Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660, 663.

(j) Railroads are under obligation to serve through routes which they have established with other carriers without respect to the fact that in rendering such service their equipment may be carried beyond their own lines, and it is their duty to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon and for the operation of such through routes. Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 530.

TOURIST CARS

See Passenger Fares and Facilities, §.4½.

TRACK SCALES

See Weights and Weighing, §2 (a), §7½, II.

TRACK STORAGE.

I. CONTROL AND REGULATION.
II. REASONABLENESS AND DISCRIMINATION.
III. TARIFFS AND CONSTRUCTION.

CROSS REFERENCES

See Demurrage, §2 (c); Reparation, §6 (e); Routing and Misrouting, §7 (e); Storage.

II. REASONABLENESS AND DISCRIMINATION.

(a) Complainant attacked defendant's track-storage rules at New York City, providing that time would be computed from the first 7. a. m. after car was placed, as unjust and unreasonable. Defendant's tariff prescribing demurrage charges allowed 48 hours free time and provided that time should be computed from the first 7 a. m. after placement on public delivery tracks, and after the day on which notice of arrival was sent to consignee. This would sometimes result in making the time for computing track-storage charges begin 24 hours before the time for computing for demurrage charges. HELD, that defendant's track-storage tariff was unjust and unreasonable in that it did not provide for computing the time from the first 7 a. m. after placement of car on public delivery track and after day on which notice of arrival was sent to consignee. Reparation awarded. Murphy Bros v. N. Y. C. & H. R. R. R., 33 I. C. C. 355.

(b) All assessments in which track-storage charges begin earlier than demurrage charges upon the same car are unjust and unreasonable. Murphy Bros. v. N. Y. C. & H. R. R. R., 33 I. C. C. 355, 357.

(c) The defendant, a railroad com-

pany, owns and operates a main line of railroad extending from Deer River to the north in Itasca county. It operates a number of connecting stub lines, the roadbed and ties of which are owned by a lumber company. It owns the rails and fasteners, it laid the rails and it maintains the tracks and roadbed in condition. It is in exclusive control of the stub lines as a common carrier. It maintains a distance mileage tariff for freight originating on the stub lines and consigned to Deer River the same as from points on its main line to Deer River. It exacts a charge of $1 per car, called a trackage charge, in addition to its published tariff rates, for cars originating on the stub lines, except those of the lumber company, and pays it to the lumber company. It renders no service for such charge. It is held that such charge is invalid. and that the plaintiffs, paying involuntarily are entitled to recover it. McCallum v. M. & R. R. Ry. Co., (Minn. 1915), 151 N. W. 974.

III. TARIFFS AND CONSTRUCTION.

(a) Charges collected during weather which prevented unloading found unreasonable and reparation awarded. Kollyrite Trucking Co. v. P. R. R. Co., Unrep. Op. A146.

(b) On two shipments of hay to Long Dock, N. J., complainant specifically routed one via N. Y. N. H. & H. R. R. to Harlem owing to an embargo against shipment to Long Dock. This, defendant considered sufficient instructions for the second car, and forwarded same via such route. Complainant accepted delivery at Harlem. HELD, not misrouting, and demurrage and track storage charges properly assessed. American Hay Co. v. B. & M. R. R., Unrep. Op. A286.

(c) Where a tariff provides that demurrage and track storage charges will not be assessed on shipments when the condition of the weather during free time is such as to make it impossible to unload, manifestly the words, "impossible to unload" can not be given a literal interpretation. They must be construed in a reasonable manner. Weather conditions that would ordinarily prevent unloading might not prevent one shipper under stress of unusual circumstances from unloading, regardless of weather conditions. The test should not be whether or not some consignee unloaded cars at the same place during the same period, but whether or not, considering the character of the freight, other consignees reasonably could and did unload. When a dispute arises, the United States Weather Bureau reports should be given proper consideration, and these, the claims and records of consignees, and the records kept by the carriers' agents should be considered together in reaching a conclusion as to whether or not the weather conditions were such as to entitle consignees to waiver of track-storage charges. Refusal to apply a reasonable interpretation of this rule, thereby depriving complainants of refunds lawfully due, subjects them to unlawful charges just as much as if they were charged more than the lawful rate for transportation. Murphy Bros. v. N. Y. C. & H. R. R. R., 33 I. C. C. 355, 358.

(d) Consignees are entitled to a reasonable time after delivery of shipment and notice of arrival thereof within which to unload without being subjected to demurrage or track-storage charges, and no reason appears why track-storage charges should begin earlier than demurrage charges on the same car. Murphy Bros. v. N. Y. C. & H. R. R. R., 33 I. C. C. 355, 356.

TRANSFER

See Absorption of Charges, §1 (b); Basing Points and Lines, §3 (c); Reconsignment, §3 (g).

TRANSIT

See Additional Charges, (1), (y); Facilities and Privileges, §15; Reshipping Rates.

TRANSPORTATION.

I. WHAT IS TRANSPORTATION SERVICE.
§1. In general.
§1½. Jurisdiction of Commission.
II. DUTY OF CARRIER TO TRANSPORT.
§2. In general.
§3. Company material.
§4. Collection of charges.
§5. Delivery.
§6. Notifying consignor or consignee.
§6½. Notice to carrier.

§7. Prompt and safe carriage.
§8. Special service.
§9. State interference.
§10. Unloading at terminal.
§11. When transit ends.
III. OPERATION OF RAILROAD.
§12. Right of carrier to make regulations.
§13. Economy of management.
§14. What are operating expenses.
§15. Right to traffic.

CROSS REFERENCES

See Act to Regulate Commerce, I (p); Additional Charges and Services, Facilities and Privileges; Refrigeration; Tap Lines; Track Storage; Water Carriers.

I. WHAT IS TRANSPORTATION SERVICE.

See Allowances, §10, §11, §12.

§1. In General.

(a) Duty of carrier is to furnish transportation under section 1. Lumber Rates through Ohio River Crossings, 29 I. C. C. 38, 39.

(b) Water lines on great lakes required to transport dairy products and furnish reasonable equipment therefor, including refrigeration; refusal to do so held to constitute an undue prejudice to such traffic. Lake-and-rail Butter and Egg Rates, 29 I. C. C. 45, 51.

(c) All service by line carriers between the rails of the carrier and the rails of an industry, either within or without the plant, is a shipper's service and not a transportation which the carriers may perform without charge or may allow for out of the rate through divisions or otherwise when performed by the industry in performing the service. Industrial Railways Case, 29 I. C. C. 212, 236, 237.

(d) When shipper is willing to accept the risk of weather conditions, carriers should not refuse to accept shipments. Protection of Potato Shipments in Winter, 29 I. C. C. 504, 505.

(e) Obligation to furnish through transportation, made mandatory by the act. C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 624.

(f) When goods have been so placed in the warehouses of the carrier at point of destination as to be reasonably accessible to consignee, open to his inspection and permitting of safe and convenient removal by consignee, common carrier liability ceases, and the responsibility thereafter is that of a warehouseman only. However, goods are not considered as being ready for delivery if they are so placed as not to be obtainable by consignee, or if they are so mingled with or covered by other goods that consignee cannot inspect or remove them without himself undertaking their selection and separation from the heap. Phila. Team Owners' Pro. Assn. v. Ry. Co., 32 I. C. C. 387, 391.

(g) The Commission believes it important that the public business of transportation should be clearly separated from private business. Coal and Oil Investigation, 31 I. C. C. 193, 224.

(h) Not material whether spur track be called a team track or an industrial track. United States Button Co. v. C. R. I. & P. Ry. Co., 32 I. C. C. 149, 150.

(i) Law imposes upon shipper duty of ascertaining rates and conditions under which he ships. Rosenheimer Malt & Grain Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-808.

(j) When line haul by one company is intended and terminal delivery is desired on tracks of another the usual practice is to indicate in some form on bill of lading that reference there made on other line is for delivery purposes only. McShane Lumber Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-821.

(k) There is no express provision, at least, of the Interstate Commerce Act, requiring notice to the consignor of the refusal of the consignee to accept the goods. Wien v. N. Y. C. & H. R. R. Co., 152 N. Y. Supp., 154, 157.

(l) A carrier is under no obligation, either by common law, the uniform bill of lading or by virtue of the Interstate Commerce Act to return goods in the event the consignee refuses to accept them. Wien v. N. Y. C. & H. R. R. Co. 152 N. Y. Supp., 154, 158.

II. DUTY OF CARRIER TO TRANSPORT.

See Cars and Car Supply, IV; Common Carriers, §6.

§2. In General.

(a) Where shipper refused to state,

as required by tariff, the market value of shipment of stocks and bonds, the carrier was under no obligation to transport such securities, and it was its duty to refuse the shipment. Acme Portland Cement Co. v. Am. Exp. Co., 28 I. C. C. 316.

(b) There is a difference in the extent to which ascertained cost can be utilized as between manufacturing and railway companies, in that a manufacturer may discontinue to manufacture a product found to be unprofitable, whereas a railway may be compelled to continue an unprofitable service. In re Separation of Operating Expenses, 30 I. C. C. 676, 678.

§5. Delivery.

See Tariffs, §3 (1) (a); Through Routes and Joint Rates, §3½ (b).

(a) Through shippers, in contracting with a carrier for the construction of industrial spur tracks to their establishments, consent to a special charge for the receipt and delivery thereon of freight by the carrier, such service is performed subject to the law of the land requiring that the carrier's charge shall not be unreasonable or unjustly discriminatory, and if it become apparent that the shippers are subjected to arbitrary and unwarranted exaction, they are not estopped from bringing the matter before the Commission, nor from securing its order directing the carrier to stop the objectionable practice. Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 819; 58 L. ed. —, 234 U. S. —.

(b) The delivery and receipt of carload freight on industrial spur tracks within a carrier's switching limits in a city, is not an added service for which the carrier is entitled to make, or should make, a charge additional to the line-haul rate to or from the city, where the line-haul rate embraces a receiving and delivery service at team tracks or freight sheds for which the spur track service is a substitute. Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 818; 234 U. S. —, 58 L. ed. —, reversing 188 Fed. 229, 929, and affirming the decision of the Commission in 18 I. C. C. 317, 318.

(c) From Boston to Haverhill, Mass., via Windham, N. H., a distance of 68 miles, delivery would not be made until the morning of the fifth day, owing to transfer of car from train to train. Haverhill Box Board Co. v. B. & A. R. R. Co., 28 I. C. C. 336, 337.

(d) Traffic in the southeast is handled largely on card waybills. Ludowici-Celadon Co. v. A. C. L. R. R. Co., 28 I. C. C. 693, 695.

(e) In the absence of tariff provision to the contrary, rates to a given point include delivery only on a carrier's own rails. Ohio Iron & Metal Co. v. C. M. & St. P. R. R. Co., 28 I. C. C. 703, 705.

(f) Shipment on local bills of lading are not ordinarily made conditional on delivery for specific loading, nor are they otherwise subject to the limitations applicable in connection with the transportation of through bills of lading shipments. Anderson-Tully Co. v. M. L. & T. R. R. & S. S. Co., 30 I. C. C. 140, 144.

(g) There is no reason why congestion or confusion should result from deliveries at adequately equipped stations or warehouses, to drays belonging to or equipped by the merchants, than from delivery to drays employed by the railroads. Merchants' & Mfrs.' Asso. v. C. R. R. Co. of N. J., 30 I. C. C. 396, 400.

(h) The service of the line carrier is confined to its own rails and delivery is made, at common law, just clear of its right of way. Industrial Railway Case, 29 I. C. C. 212, 235.

(i) Delivery of carload freight on private siding is made by shunting car upon switch clear on main tracks. Industrial Railways Case, 29 I. C. C. 212, 225.

(j) In the absence of routing instructions, carrier cannot be required to route for convenience of delivery or unloading. Middleburg Stone Co. v. B. & O. R. R. Co., Unrep. Op. A491.

(k) Where tariff schedules filed with the Commission show that "bulk freight will not be taken in less than carloads," and that "owners will be required to load and unload freight n carloads when carried to carload rates," both consignor and consignee must be taken to understand that the carrier's contract is confined to the transportation of a car, to be loaded by the consignee at one end of the route and unloaded by the consignee at the other. Lewis v. N. Y. O. & W. Ry. Co. (N. Y., 1914), 104, N. E. 944, 945.

(l) From New York and Philadelphia to Baltimore via Gettysburg delivery made on second or third morning. Via direct lines delivery at Baltimore on the first morning after shipment. Merchants & Mfrs. Asso. v. C. R. R. Co., of N. J., 30 I. C. C. 396, 399.

(m) Incumbent upon carriers to provide for the handling and delivery of freight transported by them. Merchants & Mfrs. Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 393.

(n) If the Soo line desires to give its shippers the benefit of deliveries on the tracks of other carriers in Chicago, it must expect to pay for the use of such facilities. People's Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657, 661.

(o) The duty of an initial carrier with reference to goods transported does not end by merely carrying the goods to their destination safely. Delivery to the person entitled to receive the same, or, if delivery cannot be made, then safe storage subject to the orders of the consignors is a part of the contract of carriage. Coovort v. S. P. & S. Ry. Co. (Wash. 1914), 141 Pac. 324.

(p) Wherever there is such a congestion of traffic that it is impossible to place a car exactly where the consignee wants it, the railway company simply cannot do it. What it is to do, as already held by the Canadian Board, is to put the car in as convenient a place as possible for the consignee. There is no suggestion that cars are to be kept, congesting yards, until such time as they can be placed at the exact spot where the consignee wants them. That would be unreasonable and might be impossible. The railway company's duty is, on getting its notice within the twenty-four-hour period, to spot the car as quickly and with as little inconvenience as possible under the particular circumstances which arise from day to day. Complaint of Dartnell, Ltd. (Can. Ry. Comm.), File 1700.44.

§6. Notifying Consignor or Consignee.

See Notice.

(a) No violation of Act shown by reason of carrier's failure to give advance notice of arrival of steamer. Scandinavian-American Trading Co. v. B. & O. R. R. Co., Unrep. Op. A388.

§6½. Notice to Carrier.

See Notice.

(a) It is the duty of a shipper to inform carriers of the delivery required under a rate indicated, where the delivery is to be made off the tracks of the line carrier. Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co., 28 I. C. C. 703, 706.

§10 Unloading at Terminal.

See Demurrage, §2 (k).

§11. When Transit Ends.

(a) When the transportation is divided into two separate, distinct and independent stages, the initial bill imposing no duty on the initial carrier to deliver the freight to the connecting carrier for further transportation, the responsibility of the first carrier ends with the delivery of the car at the point of connection of the two lines. Smith v. G. C. & S. F. Ry. Co. (Mo. App., 1914), 164 S. W. 132.

TRANSSHIPMENT

See Facilities and Privileges, §15½.

TRAP CARS

See Cars and Car Supply, §9⅞ (2).

TRUCKMEN

See Reparation, §6 (e).

UNDERCHARGES.

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
- §1½. Jurisdiction of Courts.

II. DUTY OF CARRIER TO COLLECT.
- §2. In general.
- §3. Defenses.

III. EVIDENCE.
- §4. Admissibility of Tariff copies.
- §5. Burden of proof.
- §6. Testimony as to rate.

IV. LIABILITY TO PAY.
- §7. In general.

CROSS REFERENCES

See Overcharges, (k); Reparation, §20½.

I. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

(a) Undercharges may be taken into account in awarding reparation. Jackson Oil & Refining Co. v. S. Ry. Co., Unrep. Op. A-763.

II. DUTY OF CARRIER TO COLLECT.

§2. In General.

(a) Undercharges may be waived in awarding reparation. Lee Broom & Duster Co. v. A. T. & S. F. Ry. Co. Unrep. Op. A-650. Menasha Woodenware Co. v. M. St. P. & S. S. M. Ry. Co. Unrep. Op. A-651. American Lumber & Mfg. Co. v. C. & O. Ry. Co. Unrep. Op. A-655.

(b) Undercharges may be taken into account in awarding reparation. Muskogee Wholesale Grocer Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-577.

(c) Allowances made for undercharge and difference in weight in awarding reparation. Kansas City Bridge Co. v. D. Q. & E. R. R. Co., Unrep. Op. A-782.

(d) Defendants authorized to waive collection of undercharges found to exist on two shipments of moulding sand from Richmond, Va., to Greensboro, N. C. Guilford Foundry Co. v. S. Ry. Co., Unrep. Op. A-873.

§3. Defences.

(a) Where a contract for a rate less than the lawful rate filed with the Commission is made between the agent of a railroad company and a shipper over that railroad and its connections, represented by the agent, and the full lawful rate is collected, and a claim for the difference between the lawful rate and the contract rate is made by the shipper and allowed through error by the railroad company, and suit is filed by it to recover the amount so improperly refunded, the shipper cannot offset the plaintiff's demand by a claim for damages on account of the breach of the illegal contract for the lesser rate. The contract being void, such damages cannot be offset or collected. C. of G. Ry. Co. v. Curtis (Ga. App. 1914) 92 S. E. 318.

(b) Where it appears that a shipper of sheep ordered double-deck cars and none being available the agent of the carrier furnished single-deck cars promising to protect the rate applicable to double-deck cars and the shipper pays the rate applicable to single-deck cars and subsequently the difference between such rate and that applicable to double-deck cars is refunded by the carrier and after more than two years has elapsed from the time of delivery of such shipments the carrier brings suit to recover such alleged undercharge, the action cannot be maintained. So. Pac. Co. v. Frye & Bruhn (Wash., 1914), 143 Pac. 163, 165.

§6. Testimony as to Rate.

See Tariffs, §19.

(a) The last ruling, before shipment of the Interstate Commerce Commission must govern a common carrier in its efforts to collect freight undercharges. Central of Georgia Ry. Co. v. Southern Ferro Concrete Co., (Ala. 1915), 68 So. 981, 982.

IV. LIABILITY TO PAY.

§7. In General.

(a) Where goods are tendered with a bill of lading showing the route, but no rate, and the goods are moved as routed, and the consignee pays the legal rate over that route, and thereafter files a claim on demand against the carrier, alleging that a lesser rate was the full lawful rate over another and different route, and that the carrier had contracted with him through its agents to meet this competitive rate, and a refund is made to the consignee, such payment, made either by mistake of the carrier or through the illegal act of an agent of the carrier, may be recovered in a proceeding brought for that purpose. C. of G. Ry. Co. v. Curtis (Ga. App 1914), 82 S. E. 318.

(b) Reparation awarded on basis of subsequently-established joint through rate and undercharge may be waived. Barnes Grocer Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-769.

(c) Undercharges on oak logs from Tuscaloosa, Ala., to Chattanooga, Tenn., may be waived to extent necessary to make applicable rate prescribed by Commission as reasonable maximum. Berry Lumber & Stave Co. v. A. G. S. R. R. Co., Unrep. Op. A-771.

(d) Under the rulings of the Commission it is left to the Courts to declare in

each case whether the consignor or consignee is legally liable for undercharges. Central of Georgia Ry. Co. v. Southern Ferro Concrete Co., (Ala. 1915), 68 So. 982.

UNIFORM DEMURRAGE CODE

See Demurrage, §18½.

UNPUBLISHED RATE

See Interstate Commerce Commission, §13; Routing and Misrouting, §12; Through Routes and Joint Rates, §13 (t), (w), §13½ (e), §16 (c), §22 (c), (o).

VALUE OF SHIPMENTS

See Classification, §11; Evidence, §61; Reasonableness of Rates, §38; Released Rates.

VALUE OF SERVICE

Evidence, §62.

VOLUME OF TONNAGE

See Advanced Rates, §2½ (n); Evidence, §63; Reasonableness of Rates, §40.

WAGES

See Advanced Rates, §2½ (1), Evidence, §2 (bb), §17 (l), §64½.

WAGON ROADS

See Evidence, §64¾.

WAIVER

See Undercharges, §2 (a), (d); Loss and Damage, §11 (a), §13⅝, §13¾ (e).

WAREHOUSEMEN.

See Facilities and Privileges, §2 (b), §16½; Lighterage, §3 (a); Loss and Damage, §6 (f); Storage.

(a) There are no public hay warehouses in New Orleans. New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607.

(b) An initial carrier is not liable under the Carmack amendment, for an interstate shipment over the lines of connecting carriers, where the goods are held at their destination by the last carrier as a warehouseman, after the lapse of a reasonable time for their removal subsequent to the mailing of a notice of their arrival and reasonable diligence to find and locate the consignee. Hogan Milling Co. v. Union Pac. Ry. Co. (Kan. 1914), 139 Pac. 397, 398.

(c) Responsibility of carrier that of warehouseman after goods have been so placed in warehouse at destination as to be reasonably accessible to consignee. Philadelphia Team Owners' Protective Asso. v. P. & R. Ry. Co., 32 I. C. C. 387,

WAR IN EUROPE

See Advanced Rates, §2½ (p); Evidence, §64⅞.

WASHOUTS

See Routing and Misrouting, §7½.

WATER CARRIERS.

I. CONTROL AND REGULATION.
§1. In general.
§2. Jurisdiction of Commission.
II. DISCRIMINATION AND REASONABLENESS.
§3. In general.
III. TARIFFS AND CONSTRUCTION.
§4. In general.
§5. Reparation.
IV. THROUGH ROUTES AND JOINT RATES.
§6. In general.
V. EVIDENCE.
§7. In general.

CROSS REFERENCES

See Absorption of Charges, §1 (c), §5 (c); Branch Lines, §1 (b); Coastwise Traffic; Discrimination, §8 (5); Equalization of Rates, §3 (g); Evidence §1½ (c), §20 (ec), (mm), (p), (q), (r); Panama Canal Act; Passenger Fares and Facilities, §14 (e), (f); Proportional Rates, II (l), IV (f); Refrigeration, §2 (b); Transportation, §1 (b); Through Routes and Joint Rates, §4 (h), §12 (a), §24 (f); Water Competition.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. In General.

(a) A steamboat line cannot be exempted from fulfilling its obligations as a common carrier to furnish a public service without discrimination, merely because the docks which it uses belong to a certain railroad. Damon v. Crosby Transp. Co., 33 I. C. C. 448, 451.

(b) The common-law rule controlling common carriers by water requires them to accept all freight of the general character which they are carrying tendered to them at a port where freight is received, to be conveyed to any port to which that character of freight is delivered. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 695.

(c) In every case in which extension of time is granted under section 5, the rates, schedules, and practices of the water carrier, governing traffic subject to the Act, must be subject to the Act to same extent as is controlling rail carrier. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 700.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission, I.

(a) The Commission has no jurisdiction over ocean rates, and must proceed as though ports were destinations instead of gateways. This does not mean that rail carriers may not take into consideration the previous or further transportation of the traffic on the ocean and thus differentiate it, reasonably, from domestic traffic; but rates to and from ports must be reasonable, must be published as independent of the ocean transportation, and are subject to all the provisions of the Act. Louisiana Sugar Planters' Asso. v. I. C. R. R. Co. 31 I. C. C. 311, 319.

II. DISCRIMINATION AND REASONABLENESS.

See Discrimination; Reasonableness of Rates.

§3. In General.

(a) Protestants complained of the action of respondents in adding butter and eggs, fresh meats, and live or dressed poultry to their prohibited list (commodities which they refuse to transport), as unreasonable. Respondents were steamboat companies, operating boats between Buffalo and ports on Lake Superior and Lake Michigan, and with the exception of one line, maintained no regular freight schedule. The territory affected, surrounding the lakes and westward to Montana, led the country in production of these products, exporting the great bulk by rail to points Buffalo and east, principally by the Chicago gateway and in the season of open navigation. The all-rail rate from Duluth to New York in carloads was $1.05, in lesser quantities, $1.12. The lake-and-rail rate was 65c in any quantity. A large part of the territory affected would be benefited to the extent of 40c per 100 lbs. on L. C. L. shipments by lake service, and the balance of the territory materially; and a difference of 1c would change the routing. To fully have equipped the respondents' vessels with the necessary refrigerating plants would have necessitated an expenditure of $600,000, but full equipment was not necessary to properly handle the traffic; and though the refrigerators were not needed on return trips they could be utilized for other purposes. Experience had demonstrated that the risk of breakage was not great in the case of eggs, the number of vessels on the lakes would render the service sufficiently regular, and arrangements could easily be made for cars to receive shipments from the boats. It was also obvious that the egg traffic would prove more remunerative to the boats than the traffic on the commodities which the eggs would displace. Finally, it was evident that the real reason for the refusal of the lake carriers to handle the commodities in question lay in the fact that the lake lines were owned by trunk lines interested in carrying them by all-rail routes. HELD, that respondents had no absolute right to refuse to carry butter, eggs and poultry, and their refusal so to do was unduly prejudicial, but that they need furnish only such number of boats with refrigerators as would provide a fairly regular service. Butter, eggs and poultry do not fall within that class of commodities which common carriers may not be forced to carry. Lake-and-Rail Butter and Egg Rates, 29 I. C. C., 45.

(b) Water carriers should not be allowed to shirk the public duty which the use and enjoyment of the great lakes navigation improvement impose

upon them. Lake-and-Rail Butter and Egg Rates, 29 I. C. C. 45, 51.

(c) On traffic from Rives Junction, Mich., to Jacksonville, Fla., the water carriers' separately established proportion from Baltimore, Md., to destination found unreasonable. Isbell-Brown Co. v. M. C. R. R. Co., Unrep. Op. A435.

(d) A contention that there is not enough freight on a river to support two boat lines, loses much of its force where it appears that complainant boat line has been able to accept only local freight while its competitor has had the advantage of offering its customers through bills of lading via the lines of the defendant railroads. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 283.

(e) Refusal of rail carriers to issue through billing in connection with water carriers denies Tampa, Fla., its natural advantages of location. Tampa Board of Trade v. L. & N. R. R. Co., 30 I. C. C. 377, 381.

(f) A navigable river is a public highway, and public interests demand that its advantages be used to fullest extent. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 288.

(g) The spirit of the Act is to maintain freedom of our ports and to allow boat lines to engage in traffic upon equal terms. Pacific Navigation Co. v. S. P. Co., 31 I. C. C. 472, 479.

(h) To permit rail carriers serving a port to favor one boat line or another would destroy the freedom of competition between boat lines which act is intended to preserve. Pacific Nav. Co., 31 I. C. C. 472, 480.

(i) To obtain thru routing water carrier should show it is a "responsible" common carrier. Eastern Shore Development S. S. Co. v. B. & O. R. R. Co., 32 I. C. C. 238, 242.

(j) Steamship company may compete with S. P. Co. from San Francisco for coastwise interstate traffic and for foreign traffic. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690.

(k) Commission doubts propriety and lawfulness of an endeavor on part of the steamship company to avoid the operation of the Act by voluntarily excluding from its legitimate business traffic between points at which its steamers touch, the carriage of which would be a violation of the law. Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 695.

III. TARIFFS AND CONSTRUCTION.

See Tariffs.

§4. In General.

(a) No violation of Act shown by reason of carrier's failure to give advance notice of arrival of steamer. Scandinavian American Trading Co. v. B. & O. R. R. Co., Unrep. Op., A-388.

(b) A water carrier must file its tariff with the Commission before the latter can compel the establishment of through routes with rail carriers. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 385.

§5. Reparation.

See Reparation.

(a) Water lines absorbing the charges of the rail lines up to Baltimore, Md., on traffic from Rives Junction, Mich., to Jacksonville, Fla., found not unreasonable, but reparation awarded because of unreasonable charges of the water line. Isbell-Brown Co. v. M. C. R. R. Co., Unrep. Op. A425.

IV. THROUGH ROUTES AND JOINT RATES.

See Through Routes and Joint Rates.

§6. In General.

(a) Complainants prayed for the establishment of through routes and joint rates from points on the lines of defendant rail carriers to Tampa, Fla., in connection with the Mallory S. S. Co. from Mobile, Ala., and the G. & S. S. S. Co. from New Orleans, La., such rates to be differentials less than all-rail rates. A 4c differential on corn, oats, bran, mill feed and shorts in sacks and flour in sacks or barrels was specifically requested. The Mallory S. S. Co. operates a weekly service in either direction between New York, Mobile, Key West and Tampa. The G. & S. S. S. Co. operates a steamer between New Orleans and Tampa, sailing every ten days. Through rates were published from Ohio and Mississippi River crossings in connection with the Mallory line from the fall of 1909 until May, 1910, which were, however, the same as the all-rail rates. The

only rail carriers which issue through billing in connection with the G. & S. S. S. Co. are those entering New Orleans from west of the Mississippi River, as to which the steamship company has established proportional rates of 9c on corn, oats, mill feed, and shorts in sacks, and 10c on flour, corn meal, grits, and hominy in sacks or barrels. The port-to-port rate on grain and grain products from New Orleans and Mobile to Tampa is 12c. The only through class rates from Ohio and Mississippi River crossings are via the all-rail routes, and are made by adding to the rates to Jacksonville, Fla., the following differentials: 50, 43, 34, 32, 28 and 27c on the numbered classes, and 19, 7, 7, 3, 28, 30 and 6c on the lettered classes. Rates to Tampa, from Cincinnati, O., Louisville, Ky., and other Ohio River crossings are 145, 123, 109, 102, 86, 73, 54, 45, 36, 28, 68, 70 and 56c, and those from St. Louis 168, 142, 114, 96, 81, 61, 53, 3, 33, 76, 80 and 70c. On grain and grain products, however, rates from the Ohio River to Tampa are 23c, from St. Louis 25c, the same as the rates to Jacksonville. The rate on grain from St. Louis to Mobile is 12c and the water rate thence to Tampa is 12c. The principal terminal lines at Tampa are the S. A. L. and A. C. L. railways, both connecting with the M. & O. Ry. at Montgomery and the L. & N. Ry. at River Junction, Fla. The haul of the M. & O. Ry. to Montgomery is shorter than to Mobile, but the lines from the former allow that carrier divisions as large or larger than its local rates to Mobile. The haul of the L. & N. R. R. to River Junction is somewhat longer than to Mobile. From Cincinnati to Tampa by rail is 1,053 miles; to Mobile, 784 miles; and the water distance from Mobile to Tampa, 330 miles. From St. Louis the rail distance is 1,187 miles to Tampa; 657 miles to Mobile. From New Orleans to Tampa by water is 430 miles, and the distances to New Orleans are 835 miles from Cincinnati and 718 from St. Louis. From Jacksonville to Tampa is 212 miles. The port-to-port rates of the water lines are: from New Orleans to Tampa, 70, 60, 55, 50, 40, 30, 25, 25, 22, 12, —, —, 30c, and from Mobile, 60, 50, 45, 40, 35, 25, 20, 15, 15, 12, 20, 20 and 25c. From St. Louis the combinations on Mobile are lower than the through rail rates by 18, 17, 16, 24, 21, 16, 0, 3, 1, 28, 3 and 0c. HELD, that through rates should be established in connection with the Mallory S. S. Co., and carriers serving Mobile will be expected to make effective within 90 days reasonable rates for rail-and-water service. Tampa Board of Trade v. L. & N. R. R. Co., 30 I. C. C. 377.

(b) A guaranty made by a railroad having no published through rate with a steamship line that the latter will transport a certain shipment is void under the prohibition against discrimination, since the difference in rates, if any, must be paid out of its earnings, resulting in a lower rate than that published. Hamlen & Sons Co. v. I. C. R. R. Co., 212 Fed. 324, 327.

(c) In a proceeding by an ocean carrier between two ports for through routes and joint fares with rail carriers, such rail carriers as have no rail lines between the ports cannot raise the question of short hauling themselves. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 478.

(d) Complainant prayed for the reestablishment of joint through rates on fresh fruit from points on the G. R. G. H. & M. Ry., via that line and the Crosby Transportation Co., a water carrier, to Milwaukee, Wis. The latter operates between Grand Haven, Mich., and Milwaukee, and during part of the year between Muskegon and Grand Rapids, Mich., and Grand Haven. In 1906 it contracted with the G. T. Ry. of Canada and its subsidiary lines to perform their service between Grand Haven and Milwaukee, using their terminals at Grand Haven and Muskegon. The Crosby line was to interchange no traffic with other carriers without permission, but the G. T. Ry. did not bind itself to furnish cargo. The G. R. G. H. & M. Ry., an electric line paralleling the G. T. Ry. between Grand Rapids and Grand Haven, and with a branch to Muskegon, established joint rates with the Crosby line in 1907, which were revoked in 1912 on demand of the G. T. Ry. Since the latter furnished slower service than the electric line, shipments of fruit from points west of Grand Rapids practically ceased. From Grand Rapids, however, the service is practically the same by either line, and the G. R. G. H. & M. Ry. has a through route to Milwaukee in connec-

tion with the Goodrich Transit Co. When the port of Muskegon is closed traffic moves from that point under joint rates via the P. M. Ry and Goodrich Co. HELD, that the former joint rates of the G. R. G. H. & M. Ry. and Crosby Co. should be reestablished as to all points on the former line except Grand Rapids, Grand Haven and Muskegon. Milwaukee Produce and Fruit Exchange, v. Crosby Co., 30 I. C. C. 653.

(e) To a contention by one railroad that a water carrier has always been found reliable, and that it does not desire to establish through routes and joint rates with a second line so long as the service rendered by the first is satisfactory, it may be rejoined that the controlling consideration must be the public benefit. This is buttressed by the presumption that, where possible, and where the roadway has not been constructed by private outlay, competition is the normal safeguard commonly relied on in the first instance. Unless there is something, such as lack of financial responsibility, to rebut the presumption that the interests of the community would be better served by two carriers than by one, the right of the petitioning boat line for through routes and joint rates is fairly apparent. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 286

(f) A natural waterway, improved by the expenditure of public funds, should be thrown open as far as possible to the free and unrestricted use of all those who desire to avail themselves of it. It differs materially from a privately constructed and owned roadbed, which, though quasi-public in nature, is built by individuals or corporate interests primarily for their own gain. A navigable river is a public highway, a natural avenue of commerce, and the public interests demand that its advantages be utilized to the fullest extent. It is true that the act to regulate commerce, in giving the Commission authority to establish through routes and joint rates, was not intended to require the Commission to establish such routes and rates whenever requested without regard to the peculiar circumstances of each case. In view of the fact that the Act was designed to promote the free movement of interstate commerce, and bearing in mind that a large river is a natural artery of commerce, it would seem that any responsible common carrier operating on the river would be prima facie warranted in requesting the Commission to allow it to participate to the fullest possible extent in the interstate commerce originating on the river. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 288.

(g) Where it is sought to apply the limitation in section 15 in a proceeding by an ocean carrier plying between two ports, to secure the establishment by a rail carrier having rail lines between such ports, of through routes and joint rates accorded competing ocean carriers, the question is whether or or not the establishment of through routes with complainant would embrace substantially less of defendant's line than is included in the through rail-and-water routes maintained with the competitors. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 479.

(h) If rail carriers are permitted to choose the particular boat lines with which they will establish through routes and joint rates, they will be able to dictate who shall operate on the water and who shall not, for a boat line accorded a monopoly of through rail-and-water traffic will soon be able to drive competitors out of business. The spirit of the Act is to maintain the freedom of ports and to allow boat lines to engage in traffic on equal terms. To permit rail carriers serving a port to favor one boat line or another would destroy the freedom of competition between boat lines which the Act is intended to preserve, and would practically close ports to all but the favored vessels. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 479.

(i) Maintenance by a rail carrier of through routes and joint fares with one ocean carrier while denying them to another, constitutes undue preference and advantage to the former and undue prejudice and disadvantage to the latter, in violation of section 3. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 479.

(j) Through rail-and-water rates between railroads and responsible river packet lines are properly established by the Commission. Bowling Green Protective Association v. E. & B. G. P. Co., 31 I. C. C. 301, 304.

(k) An objection by rail carriers to the establishment of through routes and joint rates with a water carrier, is not entitled to great weight where no reduction in rail rates to the point of junction is contemplated. Bowling Green Pro-

tective Association v. E. & B. G. P. Co., 31 I. C. C. 301, 304.

(l) The Commission is empowered to make through routes and joint rates even when one of the defendants is a water line. Bowling Green Protective Association v. E. & B. G. P. Co., 31 I. C. C. 301, 306.

(m) Complainant sought the establishment of through rail-and-water routes and joint rates from St. Louis, Mo., Chicago, Ill., Detroit, Mich, Indianapolis, Ind., Pittsburgh, Pa., Cleveland, Ohio, and Syracuse and New York, N. Y., to Bowling Green, Ky., via rail to Evansville, Ind., and packet boat beyond. Bowling Green is 196 miles by river from Evansville, on the Barren River, a branch of the Green River. These rivers were crossed by five railroads. The water route was open for navigation the year around, except in extremely dry summers and cold winters. The packet company's management was efficient, it published a local tariff, and joined in through routes and joint rates to restricted territory. Its boats made two round trips a week between Evansville and Bowling Green. Despite a yearly expense of $117,744.87 it yielded a 5 per cent dividend, and handled 1,444,484 lbs. of carload and 1,135,815 lbs. of less than carload freight. Reductions of 39c, 34c, 34c, 30c, 26c and 24c in rates on the six numbered classes from New York to Bowling Green, following the Commission's order in Bowling Green Business Men's Association v. L. & N. R. R. Co., 24 I. C. C. 228, had practically eliminated the rail-and-water differential under all-rail as to rates from New York and Syracuse, but there remained a considerable differential as to the other points of origin. Thus, from St. Louis, Chicago and Detroit, the all-rail rates were 92c 78c and 81c. and the combination rates via rail -and-water, including a 3c drayage charge, were 58½c, 63c and 68c. While denying to Bowling Green the rail-and-water through routes and joint rates asked, defendants accorded such routes and rates to various landings on the Green and Barren rivers. HELD, that the rail-line defendants should establish such routes and rates to Bowling Green in connection with the packet company, observing the custom that rail-and-water rates should be lower than all-rail rates. Bowling Green Protective Association v. E. & B. G. P. Co., 31 I. C. C. 301.

(n) Complainant, operating a steamboat line on the Tennessee River, prayed for an order requiring that the L. & N. R. R., the S. Ry. and the N. C. & St. L. Ry. be required to establish through routes and joint rates between Tennessee River landings and eastern destinations. Such privileges were accorded a competitor, the Tenn. R. Nav. Co., a somewhat older and larger concern. Transportation business on the river was not remunerative, and even the latter line had not made large returns. Methods of handling and delivering freight were primitive, neither line having warehouses, each farm having its own landing, and if a boat happened to be loaded to capacity it would go past without taking up the cotton, leaving it exposed until the next week's trip. Many planters preferred hauling their cotton fifteen or twenty miles by wagon to the railroad. While complainant was closely connected with the Hitt Lumber Co., and derived much of its revenue from transportation of the lumber company's logs, it published tariffs in compliance with state law, made its trips according to published schedule, and a large portion of its freight was gathered from farmers along the river. HELD, the refusal to join with complainant in the establishment of through routes and joint rates from Tennessee River landings to destinations on defendant's lines and connections was discriminatory and otherwise unlawful, and that defendants should join with complainant in establishing such routes and rates. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281.

(o) Cancellation of rates with boat lines permitted where boat lines manipulated manifests and received excessive divisions. Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I .C. C. 364, 368.

(p) Upon request of the Grand Trunk Ry. Co., the Crosby Transportation Co., a water line, cancelled joint rates with the Grand Rapids, Grand Haven & Muskegon Ry. Co., an electric line, causing decrease in movement of Michigan fruit to Milwaukee. Joint rates ordered reestablished. Milwaukee Produce and Fruit Exchange v. Crosby Transportation Co., 30 I. C. C. 653, 655.

(q) Complainant, a water line, sought to compel rival carriers to join with it in through routes and joint rates between certain landings on Chesapeake Bay and its tributary waters and points on the

lines of the B, & O. R. R. and its connections. The B. & O. R. R. had through routes and joint rates with other companies serving Chesapeake Bay landings by water, and with the Maryland Electric Rys. Co., but refused to participate with complainant. Complainant's actual grievance seemed to be that for shipments originating on its line and destined to points on and beyond the B. & O. R. R. the combination was charged, which was greater than joint rates accorded to the other boat lines. Complainant is a corporation and has operated a passenger and freight service between points on Chesapeake Bay since May, 1912. It has five boats, the line touching Annapolis, Claiborne, Cambridge, Secretary, Neavitt, Oxford, Easton, Tilghman's Island, Sherwood, Bozman and other points on and near Chesapeake Bay. To some of the landings there was a daily service, the boats carrying from 10 to 20 tons of freight per day, all miscellaneous merchandise in L. C. L. lots. It had direct connection with the Maryland Electric at Severnside, Md., whence freight might be transported to the B. & O. R. R. at Baltimore. The freight service of the Maryland Electric was of the usual standard character. Two other lines operated boats on the waters in and near Chesapeake Bay, the Maryland, Delaware & Va. Ry. (called the Delaware Co.), which also operated a rail line easterly through Maryland and Delaware to Rehoboth; and the Baltimore, Chesapeake & Atlantic Ry. (called the Atlantic Co.), which operated a rail line from the eastern shore of Chesapeake Bay through Maryland to the Atlantic Ocean at Ocean City. The western termini of these lines were connected by boat with the B. & O. R. R. These companies, taken together, touched the principal landings of Chesapeake Bay, Potomac River, Rappahannock River and Patuxent River. They are both controlled by the Pennsylvania Co. There is considerable traffic in oysters, crabs, fish, fruit and the like, moving from Chesapeake Bay landings through Baltimore to the west. The first-class rate from Cambridge, Md., across the Bay through Baltimore to Peoria, Ill., was 83 cents. From the same point via complainant's boats, via Annapolis & Maryland Electric Ry., through Baltimore, on the combination rate, the charge was $1.03. Complainant competed with the Delaware and Atlantic companies at a number of points. There was a saving of time in handling via complainant's line. But on certain traffic there were transfer charges between the boat lines and the B. & O. R. R., which were absorbed in the through rate. It appeared the service rendered by the Atlantic and Delaware lines was sufficient; that there had been no complaint from shippers, and that complainant's boats were small. There was, however, no contention made by defendant that the joint rates accorded the Delaware and Atlantic lines were not remunerative or that similar rates via complainant's line would not be remunerative. It appeared certain shippers would make use of complainant's line if it were accorded through rates. It was doubtful if there was any competition at the present time, as the boats of the Delaware and Atlantic companies did not touch the same landings and both companies were operated under common ownership. HELD, A natural waterway, improved by the expenditure of public funds, should be thrown open as far as possible to the free and unrestricted use of all those who desire to avail themselves of it. No possible disadvantage to the B. & O. R. R. appeared of record, provided complainant was a "responsible" common carrier. A reasonable public necessity for the participation in such through routes and joint rates by a boat line, rendering the character of service offered by complainant, appearing, and it not being shown that the present service is adequate for all present or future needs, or that such competition exists between complainants' two competitors as might be expected to extend and improve the service, and inasmuch as it may be fairly assumed that the present through rates are reasonable and that they would be if participated in by complainant, the refusal of the B. & O. R. R. Co. to join with complainant in the establishment of through routes and joint rates as prayed is unreasonable and unjustly discriminatory. Eastern Shore Development S. S. Co. vs. B. & O. R. R. Co., 32 I. C. C. 238.

(r) A navigable river being a public highway, a responsible common carrier operating thereon is prima facie warranted in requesting the Commission to require the establishment of through routes between landings on river and points on defendant's line. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281.

(s) Public interest demands that advantages of a navigable river be utilized

to fullest extent Decatur Nav. Co. vs. L. & N. R. R. Co., 31 I. C. C. 281, 286, 288.

(t) A navigable river is the natural avenue of commerce. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 288.

(u) Natural waterway, improved by public funds, should be open to free and unrestricted use of all who desire to avail themselves of it. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 288.

(v) A large river is the natural artery of commerce, and any common carrier thereon would be warranted in requesting the Commission to allow it to participate in interstate traffic originating on that river. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 288.

(w) The Commission has power, under sections 1 and 15, to compel the establishment of through routes and joint rates between rail and water carriers. Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 287.

(x) The Commission has power to make through routes and joint rates when one of the carriers is a water line. Bowling Green Protective Asso. v. E. & B. G. Packet Co., 31 I. C. C. 301, 306.

(y) California terminal lines required to establish through routes and joint fares in connection with steamers, notwithstanding limitation contained in Section 15. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 476, 478.

(z) Spirit of act to maintain freedom of our ports and to allow boat lines to engage in traffic upon equal terms. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 479.

(aa) Defendant required to establish through routes and joint through class rates between stations on the defendant's line and landings on the Hudson River reached by boat line. Catskill & New York Steamboat Co., Ltd., v. P. R. R. Co. Unrep. OP. A-756.

(bb) Whether or not a railroad is justified in entering into joint rates with one steamboat line, while refusing to do so with a second, is a matter which can only be fairly determined after formal hearing upon complaint. Financial Relations, Etc., L. & N. R. R., 33 I. C. C. 168, 206.

(cc) It is a generally accepted principle of rate making that through rates should be less than the sum of the intermediate rates. That this rule should be applied where one of two connecting carriers transports the goods by water and the other by rail is evident from the provisions of the Act to regulate commerce. Not only is the Commission given power, under section 15, to require rail carriers to join with water carriers in establishing through routes and joint rates, but under section 6 as amended it is authorized to establish maximum proportional rates by rail to and from ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 392.

(dd) If carriers are permitted to apply higher rates for the same service on traffic routed over connecting water lines than on traffic via their all-rail connections, they will be in a position to destroy all water competition and to deprive shippers of the advantage of their location upon navigable waters. Chattanooga Packet Co. v. I. C. R. R., 33 I. C. C. 384, 392.

(ee) Complainant attacked the joint through rail-and-water rates on grain and grain products from Ohio and Mississippi river crossings and other points to Tampa, Fla.. New Orleans, La., and G. & S. S. S. Co. and via Mobile, Ala., and the M. S. S. Co., as unjust and unreasonable in so far as they exceeded the existing rail rates to those ports by more than 10c. Certain joint rates via New Orleans were greater than the sum of the rail rates to that port and the proportional water rates beyond; but the through rates were generally only 2c lower than the all-rail rates. Thus, from Memphis, Tenn., to Tampa, distant 948 miles all rail, 942 miles rail-and-water via New Orleans, and 837 miles via Mobile, the rates were: Joint through all-rail, 22c; joint through rail-and-water, 20c; and combination, via New Orleans, 16c. The combination via Mobile, plus a 1c handling charge at that port exceeded the joint rail-and-water rates. HELD (1) that the joint through rail and water rates were unjust and unreasonable in so far as they exceeded the existing rail rates to the ports by more than 10c, and (2) the water-and-rail rates via New Orleans to Tampa were in violation of the fourth section in that they exceeded

the sum of the intermediates. Tampa Board of Trade v. A. & V. Ry. Co., 33 I. C. C. 457.

§6½. Free Transportation.

See Free Transportation.

(a) In the provision of section 1 as amended by the Hepburn Act, that "no common carrier subject to the provisions of this Act shall issue or give any interstate free ticket, free pass," etc., the phrase "common carrier" is not limited to "common carriers subject to the provisions of this Act," and hence a common carrier subject to the Act may exchange passes with ocean steamship lines and foreign railroads. United States v. E. R. R. Co., 213 Fed. 391.

V. EVIDENCE.

See Evidence.

§7. In General.

(a) Boat line originating traffic considered same as branch line to rail carrier. R. R. Com'rs of Fla. v. A. C. L. R. R. Co., 28 I. C. C., 356, 359.

(b) Large and important quantities of low-grade commodities move into and out of the south Atlantic ports by tramp steamers. Fourth Section Violation in the Southeast, 30 I. C. C. 153, 170.

(c) The distance from New York City to Norfolk via the steamer lines is assumed by the carriers for the purpose of division of rates to be the equivalent of 160 miles of rail haul. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 163.

(d) Distances from New York City to Charleston, Savannah or Brunswick by water is assumed by carriers for purpose of effecting divisions of rates to be the equivalent of 250 miles of rail haul. Fourth section Violations in the Southeast, 30 I. C. C. 153, 178.

(e) Rates and facilities of the rail lines have eventually attracted nearly all the long-distance traffic between Ohio River, upper Mississippi River, and Missouri River points and New Orleans. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 230.

(f) Average vessel carries about 100 carloads of bananas, and can be loaded at the rate of 10 cars per hour. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 517.

(g) In constructing joint rates via rail and water, some difference should be made in water rates for lower classes. Bowling Green Protective Asso. v. E. & B. G. Packet Co., 31 I. C. C. 301, 305.

VI. LOSS OR DAMAGE.

See Loss and Damage.

§8. In General.

(a) The language of the Carmack amendment does not make the initial carrier liable for every loss occurring on its line or those of its connections, but only for loss caused by the default, omission, or commission of initial or connecting carrier. A loss occurring without neglect or design of a carrier cannot be said to be caused by such carrier, and hence a loss occurring from fire on a vessel of a connecting carrier, without its design or neglect, for which it is relieved from liability by sections 4282 and 4289 of the U. S. Revised statutes, cannot be said to be a loss for which the initial carrier is liable. Burke v. G. C. & S. F. Ry. Co., 147 N. Y. S. 794, 798.

WATER COMPETITION

See Advanced Rates, §7 (1) (d), (5) (b); Claims, §2 (i); Class Rates, §2 (i); Classification, §17 (yyyy), §20 (j); Discrimination, §4 (b), (aa), §8 (5); Equalization of Rates, §3 (zz), §4 (4); Evidence, §13 (1) (v), §14 (5); Long and Short Hauls, §10; Panama Canal Act; Reasonableness of Rates, §8 (4); Routing and Misrouting, §2 (b); Season Rates, (a); Through Routes and Joint Rates, §4 (c).

WEATHER RULE

See Demurrage, §14 (c), §19; Track Storage, III (a), (c); Transportation, §1 (d).

WEIGHTS AND WEIGHING.

1. CONTROL AND REGULATION.
   - §1. In general.
   - §2. Jurisdiction of Commission.

II. METHODS OF COMPUTING CHARGES.
§2½. In general.
§3. Actual weight.
§4. Capacity weight.
§5. Estimated weight.
§6. Reweighing.
§7. Scaleage and shrinkage.
§7½. Track scales.

III. DISCRIMINATION.
§8. In general.

IV. EVIDENCE AND BURDEN OF PROOF.
§9. In general.

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VI. TARIFFS AND CONSTRUCTION.
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CROSS REFERENCES

See Additional Charges, (d); Classification, §3 (c), §5 (f); Demurrage, §8 (a); Evidence, §65; Facilities and Privileges, §15 (xx); Minimums; Refrigeration, V; Switch Tracks and Switching, §4 (d).

I. CONTROL AND REGULATION.

§2. Jurisdiction of Commission.

(a) Some Federal tribunal, perhaps the Commission, should be given authority over track scales. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 23.

II. METHODS OF COMPUTING CHARGES.

§2½. In General.

(a) Every carload of freight, where track scales are relied upon to determine weight upon which freight charges are to be assessed, should be weighed within 50 miles of the point of origin ordinarily. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 36.

(b) Weight of car varies from week to week, according to climatic conditions. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 34.

(c) Accuracy in matter of weight becomes important in proportion to value of article. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 29.

(d) Cars should never be weighed in motion coupled at both ends, and ordinarily not when coupled at one end. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 17.

(e) Tolerance is the limit of error within which the ascertained track scale weight of a carload of freight shall be deemed to be correct. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 29.

(f) Five hundred pounds may be regarded as reasonable tolerance. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 30.

(g) Stencilled weight on cars often inaccurate. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 19.

(h) Cars must be spotted in order to be properly weighed. American Brake Shoe & Foundry Co. v. B. Ry. of O., 28 I. C. C., 350, 351.

(i) Carriers not required to accept weight ascertained on private scales. Schenck v. N. & W. Ry. Co., 29 I. C. C. 125, 127.

(j) Rule that charges will be assessed on weights as ascertained at defendant's regular weighing stations and that this rule will not be departed from held unreasonable. Schenck v. N. & W. Ry. Co., 29 I. C. C. 125.

(k) Complainant's contention that assessment of freight charges should be upon the weight at destination instead of at point of origin not sustained. Miller & Co. v. G. T. W. Ry. Co., Unrep. Op. A417.

(l) Deduction of 1,000 pounds for lining and stoves on shipment of potatoes not shown unreasonable. Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A539.

(m) It is unjust and unreasonable not to promptly report scale weights to billing office and give shipper opportunity to surrender additional billing. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 684, 685, 698.

(n) To weigh all shipments of canned goods would add to cost of handling and would be detrimental to both shippers and canners. Allen Bros. Co. v. P. B. & W. R. R. Co. Unrep. Op. A-709.

(o) Charges based upon through rate from North Pacific Coast points to Eastern destinations at total weight of shipment, and no allowance made for weight

of fish removed from car at stopping points. Cancellation of stoppage-in-transit arrangement not justified. Transit Privileges on Carload Shipments of Fish. Unrep. Op. A-765.

(p) Complainant alleged through defendant's refusal to permit continuance of a check weigher's presence in its yard office at North Bemidji, Minn., they had been subjected to unreasonable rates through gross errors inadvertantly committed by employees operating the scales. Check weighers had formerly been permitted to record tare weights, watch from yard office placement of car on scale platform and balancing of beam, verify weights on scale tickets, and also to go over all the weighbills in defendant's possession. While withdrawing the privilege, defendants furnished on request all desired information. HELD, that the privileges still afforded complainant's agent were apparently sufficient to enable him to detect and rectify all errors. Complaint dismissed. National Pole Co. v. M. & I. Ry. Co., 33 I. C. C. 372.

(q) Evidence not sufficient to sustain allegation that charges on cattle from Colorado and Kansas points to Kansas City, Mo., were excessive, due tc fact that cattle were fed and watered at destination before weighing. Thomas & Osborn v. A. T. & S. F. Ry. Co., Unrep. Op. A-956.

§3. Actual Weight.

(a) To assess freight charges upon any other than actual weight is to impose rate either too high or too low and to discriminate between different shippers. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 30.

(b) Charges on potatoes should have been assessed on actual weight instead of per crate basis. Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., 28 I. C. C., 274, 276.

(c) Charges unreasonable, in so much as the charges collected were not based on actual weight. Lee Co. v. I. C. R. R. Co., Unrep. Op. A422.

(d) Carriers had no joint rates or prorating arrangements. Delivering line applied a minimum weight of 40,000 ponuds, when initial carrier applied only the actual weight of 27,000 pounds. HELD, that the actual weight should apply. Dant & Russell v. G. & P. R. R. Co., Unrep. Op. A436.

(e) In the absence of the complainant showing that the charges were collected on any other than the actual weight, they are not found unreasonable. Eakle Lumber Co. v. N. & W. Ry. Co., Unrep. Op. A477.

(f) Charges collected on emigrant movables from Kendrick, Idaho, to Brady, Mont., based on weight of 26,580 pounds. Rate found unreasonable and reparation awarded on basis of actual weight of 21,-230 pounds. Osborn v. N. P. Ry. Co. Unrep. Op. A-723.

(g) Charges in concentrating tables, forwarded upon three separate bills of lading, from Fort Wayne, Ind., to Miami, Ariz., assessed on basis of actual weight subject to prescribed minimum for each of three cars not found unreasonable. Deister Concentrator Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-857.

§5. Estimated Weight.

(a) An estimated weight should bear some close relation to the actual weight. Where the estimate is about one-third more than the actual weight it is manifest that there is something radically wrong with the estimated weight. Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co., 28 I. C. C., 274, 278.

(b) Carriers apply the same estimated weights to both telegraph poles and piling poles. Eakle Lumber Co. v. N. & W. Ry. Co., Unrep. Op. A477.

(c) Charges assessed on shipment of ties from Anthony, W. Va., to Grand Rapids, Mich., at weight of 117,500 lbs. Rated capacity of car was 80,000 lbs. Reparation awarded on basis of estimated weight of 5½ lbs. per foot, board measure. Johnson & Son v. C. & O. Ry. Co., A-551.

(d) Reparation awarded on shipments of beets in mixed carloads from Roseland, La., to Chicago, Ill., on basis of estimated weight of 31 lbs. per hamper. Roseland Truck Farmers' Association v. I. C. R. R. Co., Unrep. Op. A-615.

(e) Estimated weights for standard containers of two dozen No. 2 cans of tomatoes not found unreasonable. Allen Bros. Co. v. P. B. & W. R. R. Co. Unrep. Op. A-709.

(f) Carriers have fixed estimated weights for packages of different varieties of fruit, and weight is determined by

number of standard size packages loaded into car. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 31, 35.

(g) Scale weights on lath from Dover, Idaho, to Calgary, Alberta, Canada, not found to be incorrect. Basis of estimated weights used not shown to be more accurate. Dover Lumber Co. v. S. I. Ry. Co., Unrep. Op. A-854.

(h) Shingles did not weigh in excess of prescribed minimum. Reparation awarded on mixed carload of lumber and shingles from Selleck, Wash., to Lakeside, Neb., on basis of stralght carload rate of 46 cents per 100 pounds. Pacific States Lumber Co. v. N. P. Ry. Co., Unrep. Op. A-876.

(i) Contention that weight computed on basis of marked capacity of car should have been on basis of estimated weight not sustained because agent of carrier was not furnished with copy of invoice showing number of feet of lumber in loaded car and whether lumber was green or seasoned as required under tariff. Berthold & Jennings Lumber Co. v. A. T. & N. Ry. Co., Unrep. Op. A-888.

§6. Reweighing.

(a) Complainant protested against the freight charges made on a shipment of two carloads of lump coal from Vivian, W. Va., to Chicago, as unreasonable because assessed on a greater tonnage than was delivered, and asked reparation. The coal was shipped over the N. & W. Ry., and a connecting carrier. The rules of the former company provided that freight charges assessed on weights ascertained at its regular weighing stations, would in no case be departed from, while the rules of the connecting line provided for reweighing upon request where evidence of error was furnished. Freight charges were collected upon a weight of 102,900 lbs., on one car and 94,200 on the other, obtained by using the Norfolk scales. Upon delivery complainant, without requesting a reweighing, caused the cars to be reweighed on its track scale, disclosing weights of 99,900 lbs., and 91,300 lbs., respectively. HELD, that the rule of the N. & W. Ry. Co. was unreasonable, but that a rule requiring carriers to accept weights ascertained by shippers would not furnish the proper remedy. Defendant directed to modify rule so as to provide for reweighing. Reparation denied. Schenck v. N. & W. Ry. Co., 29 I. C. C., 125.

(b) If original weight was improper, shipper ought not to be required to pay for reweighing. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 30.

(c) Following rules should be adopted: Reweigh every car within one year from date when it is put into service; reweigh after it undergoes substantial repairs; reweigh at least once in two years. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 35.

(d) Tariffs should provide that where reweighing is requested by shipper, and shows error beyond limit of tolerance fixed, no charge shall be made for reweighing. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 31.

(e) It is the right of shipper to demand reweighing if he desires it. American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C., 350, 353.

(f) Car of cypress lumber from New Orleans to St. Joseph, Mo., was reweighed and charges collected on 55,900 lbs. instead of 54,000 lbs. net weight. Reparation denied. Ruddock Orleans Cypress Co. v. L. R. & N. Co., Unrep. Op. A-634.

§7. Scaleage and Shrinkage.

See Facilities and Privileges, §12.

(a) Charges assessed on basis of scale weights on coal from Rock Springs and Diamondville, Wyo., to Butte and Rocker, Mont., not found unreasonable. Northwest Coal Co. v. U. P. Ry. Co. Unrep. Op. A-665.

§7½. Track Scales.

See Facilities and Privileges, §15 (zz).

(a) A majority of the track scales now in use should be rebuilt, and many additional should be installed. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 11.

(b) Track scales should be accurate within at least 100 pounds. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 13.

(c) Government should determine kind of apparatus with which track scales are to be tested, manner of testing and frequency with which test shall be made.

In re Weighing of Freight by Carriers. 28 I. C. C., 7, 33.

(d) Scales should be tested by test car at least once in two months; in many cases every month. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 13.

(e) Access should be had to a master scale to make certain of correctness of test car. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 12.

(f) Carrier may not provide that weight of a particular scale shall govern. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 30.

(g) Billed weight of lumber ascertained by weighmaster on tested scale not found excessive. Kulzer v. G. N. Ry. Co., Unrep. Op. A-849.

(h) Track scales showed weights greater than estimated weight based on 450 pounds per 1,000 lath. Scale weights not found to be erroneous. Dover Lumber Co. v. S. I. Ry. Co., Unrep. Op. A-854.

III. DISCRIMINATION .

See Discrimination.

§8. In General.

(a) Inaccuracies in weighing result in the imposition of unreasonable charges and in discrimination between shippers just as really as do differences in the freight rate itself. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 10.

IV. EVIDENCE AND BURDEN OF PROOF.

See Evidence.

§9. In General.

(a) A dispute as to weight of a past shipment raises a question of fact which is difficult of determination and evidence of a positive character as to the incorrectness of the scaling by the carrier is necessary before another weight can be substituted therefor. Kulzer v. G. N. Ry. Co., Unrep. Op. A-849.

VI. TARIFFS AND CONSTRUCTION.

See Tariffs.

§12. Inspection Bureaus.

See Inspection.

(a) Daily inspection of scales by person in charge should be supplemented by an expert inspection at regular intervals. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 12.

(b) Representatives of weighing bureaus may examine books and records of shippers. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 28.

(c) Weighmaster should be representative of public authority. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 34.

(d) Suggested that Board of Trade be given jurisdiction over platform scales. In re Weighing of Freight by Carriers, 28 I. C. C., 7, 23.

VII. CHARGES.

§13. In General.

(a) Charge of 50 cents per car where cars are switched to private scales for weighing unless weights so ascertained were used for the assessment of freight charges not found to be unlawful. American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C., 350.

WHARFAGE

See Additional Charges, (u); Facilities and Privileges, §16.

WITNESSES

See Immunity of Witnesses; Interstate Commerce Commission, §6; Procedure Before Commission, §1½.

ZONE RATES

See Blanket Rates.

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Alliance Alfalfa Hay Co. v. S. Ry. Co., Unrep. Op. A-837—Overcharges, (dd); Reconsignment, §2 (i).

Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414—Blanket Rates, §3 (f); Differentials, §7 (d); Evidence, §14 (1), (mm); Interstate Commerce Commission, §1 (ii); Reasonableness of Rates, §9 (g).

Altha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919—Through Routes and Joint Rates, §22 (v).

Alton Board of Trade v. C. & A. Ry. Co., 28 I. C. C. 589—Blanket Rates, §8 (bc); Bridge Tolls, I (dd); Divisions, §7 (b); Long and Short Hauls, §5 (g); Reasonableness of Rates, §28 (m).

Alton Box Board & Paper Co. v. I. T. R. R., 35 I. C. C. 1—Thru Routes and Joint Rates, §13 (eee).

American Agricultural Chemical Co. v. B. & A. R. R. Co., 28 I. C. C. 398—Bills of Lading, §9 (3), (a), §10 (b); Routing and Misrouting, §3½ (a), §4 (b).

American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C. 350—Additional Charges and Services, (f); Classification, §5 (f); Switch Tracks and Switching, §4 (d); Weights and Weighing, §2½ (h), §6 (e), §13 (a).

American Coal & Supply Co. v. C. & N. W. Ry. Co., 30 I. C. C. 492—Basing Points and Lines, §2 (i);Branch Lines, §1 (g), §3 (b); Evidence, §13 (1), (v); Minimums, §7 (i).

American Furniture Co. v. C. & E. R. R. Co., Unrep. Op. A-597—Classification, §17 (4d).

American Hair Felt Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-674—Classification, §17 (4s); Reparation, §16 (4e).

American Hay Co. v. B. & M. R. R., Unrep. Op. A-286—Demurrage, §2 (c); Routing and Misrouting, §7 (e); Track Storage, III (b).

American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659—Demurrage, §2 (e), §3 (a), §14 (b), §16 (c); Storage, §2 (i); Facilities and Privileges, §15 (x), §15 (3k).

American Lumber & Mfg. Co. v. D. T. & I. Ry. Co., Unrep. Op. A-584—Routing and Misrouting, §4 (q); Through Routes and Joint Rates, §15 (ii).

American Lumber & Mfg. Co. v. C. & O. Ry. Co., Unrep. Op. A-655—Routing and Misrouting, §4 (s), (t); Undercharges, §2 (a).

American Lumber & Mfg. Co. v. Miss. Central R. R. Co., Unrep. Op. A-726—Routing and Misrouting, §2 (i).

American Milling Co. v. C. I. & S. R. R. Co., Unrep. Op. A-795—Bridge Tolls, I (n); Reasonableness of Rates, §32½ (e).

American National Live Stock Asso. v. S. P. Co., 32 I. C. C. 438—Classification, §17 (6v); Tariffs, §7 (x), (r); Through Routes and Joint Rates, §1 (r), §11 (2), (j); Cars and Car Supply, §8 (q); Classification, §17 (5a), (6w).

American Naval Stores Co. v. L. & N. R. R. Co., Unrep. Op. A-922—Facilities and Privileges, §15 (5i); Through Routes and Joint Rates, §15 (3d).

American Refining Co. v. St. L. & S. F. Ry. Co., 30 I. C. C. 103—Differentials, §8 (j); Evidence, §18 (m).

Am. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458—Any-Quantity Rates, I (k), (l), (o), (p), (q); Classification, §4 (d), §5 (t), (x), §16 (aa); Concentrating Rates and Privileges, (f); Discrimination, §5½ (j), (m), §13½ (b); Evidence, §1 (gg), §14 (1), (ii), §18 (hh), §34½ (b), (c), §44 (c), §54 (a), §62 (e), §63 (jj), (kk), §65 (f), §69 (f), (g); Reasonableness of Rates, §2 (s), §26½ (b), §40 (d).

American Steel Dredge Co. v. American Exp. Co., Unrep. Op. A-807—Expedited Service, (e); Express Companies, §10 (i); Minimums, §7 (q).

American Tobacco Co. v. P. R. R. Co., Unrep. Op. A-160—Classification, §5 (n); Facilities and Privileges, §10 (d).

American Warehouse Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-103—Facilities and Privileges, §15 (sc); Reparation, §16 (gh).

American Woolen Co. v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A-846—Classification, §17 (7i); Minimums, §7 (s); Reparation, §8 (ff).

Anderson-Tully Co. v. M. L. & T. R. R. & S. S. Co., 30 I. C. C. 140—Export Rates and Facilities, VI (a); Demurrage, §3 (b), §15 (c); Transportation, §5 (f).

Anderson-Tully Co. v. A. & V. Ry. Co., Unrep. Op. A-643—Reasonableness of Rates, §7½ (m).

Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332—Blanket Rates, §13 (i); Classification, §11 (a), §17 (6c), (6d), §20 (p); Discrimination, §2 (f), (g), §3 (ee); Minimums, §1 (f).

Application of Fonthill Gravel Co. Ltd., (Can. Ry. Comm.), File 18265.3—Reasonableness of Rates, §38 (a); Through Routes and Joint Rates, §15 (oo).

Application of the Penn Co. under the Pan. Can. Act, 34 I. C. C. 47—Panama Canal Act, (c).

Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690—Coastwise Traffic, (b); Common Carrier, §8 (h); Evidence, §14 (1), (ll), (5), (ww), (xx); Foreign Commerce, §1 (c), §2 (e), (f); Interstate Commerce Commission, §1 (bb); Panama Canal Act, (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (z); Water Carrier, §1 (b), (c), §3 (j), (k).

Arbuckle Bros. v. Old Dominion S. S. Co., Unrep. Op. A-550—Drayage, (b); Routing and Misrouting, §11 (a); Long and Short Hauls, §4 (d); Through Routes and Joint Rates, §15 (d).

Arizona Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-885—Reparation, §16 (5m).

Arizona Corporation Commission v. A. & N. M. Ry. Co., 29 I. C. C. 424—Blanket Rates, §8 (dd).

Arizona Corporation Commission v. A. T. & S. F. Ry. Co., 28 I. C. C., 428—Basing Points and Lines, §2 (e); Distance Rates, §1 (b); Evidence, §17 (c).

Arizona Corporation Commission v. A. T. & S. F. Ry. Co., 34 I. C. C. 158—Equalization of Rates, §3 (3d).

Arizona Lumber & Timber Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-920—Classification, §17 (7t), (7u); Reparation, §16 (5w), (5x); Routing and Misrouting, §12 (a).

Arkansas Fruit Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-304—Differentials, §8 (h); Evidence, §12 (1) (pp).

Arkansas Short Leaf Lumber Co., v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-435—Evidence, §59 (m).

Armour Grain Co. v. I. C. R. R. Co., Unrep. Op. A-742—Reparation, §8 (u).

Armstrong v. I. C. R. Co. (Ky. 1915), 172 S. W. 947—Loss and Damage, §2 (bb).

Astor v. St. L. & S. F. R. R. Co., Unrep. Op. A-915—Reasonableness of Rates, §28 (6e), (6f), (6g); Reparation, §16 (5t).

A. T. & S. F. Ry. Co. v. Boyce (Tex.), 171 S. W. 1094—Loss and Damage, §2 (v), §6 (y).

A. T. & S. F. Ry. Co. v. Kansas City StockYards Co., 33 I. C. C. 92—Allowances, §12 (2) (a); Common Carriers, §8 (i); Stock Yard Companies, (a), (b), (c), (f); Tariffs, §1 (c).

A. T. & S. F. Ry. Co. v. Robinson, 34 Sup. Ct. 556, 233 U. S. 173, 58 L. ed—Interstate Commerce, §5; Loss and Damages, §3 (a); Released Rates, §6 (b).

A. T. & S. F. Ry. Co. v. United States, 34 Sup. Ct. 291, 232 U. S. 199, 58 L. ed—Precooling, I (a), II (a), V (a); Refrigeration, §1 (a), §2 (a).

A. T. & S. F. Ry. Co. v. Ward (Tex. Civ. App., 1913), 159 S. W. 375—Loss and Damage, §2 (e), (f).

Atha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919—Basing Points and Lines, §1 (dd), §2 (m); Distance Rates, §1 (i); Long and Short Hauls, §4 (mm), §9 (l); Reasonableness of Rates, §28 (6h).

Athens Glass Co. v. B. & O. R. R., 35 I. C. C. 22—Discrimination, §4 (tt).

Athens Pottery Co. v. T. & N. O. R. R. Co,, Unrep. Op. A-796—Reparation, §11 (e), §16 (5c).

Atkinson-Williams Hdwe. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-652—Classification, §15 (r).

Atlanta Freight Bureau v. N. C. & St. L. Ry. Co., 29 I. C. C. 476—Basing Points and Lines, §1 (s), (t); Branch Lines, §3 (c); Classification, §2 (f); Equalization of Rates, §3 (b); Evidence, §1½ (c), §2 (jj), §14 (1) (k), §55 (a), §64 (c), §66 (f); Reasonableness of Rates, §36 (b).

Atlanta Journal Co. v. S. A. L. Ry., 28 I. C. C., 186—Basing Points and Lines, §3 (d); Differentials, §8 (e); Discrimination. §3 (bc); Long and Short Hauls, §2½.

Atlanta Milling Co. v. L. & N. R. R. Co., 31 I. C. C. 485.

Facilities and Privileges, §15 (mm), (nn), (oo), §19 (a).

Atlantic Coast Line Ry. v. Riverside Mills, 219 U. S. 186, 31 Sup. Ct., 164, 55 L. ed., 167, 31 L. R. A. (N. S.), 7—Loss and Damage, §2 (mm).

Atlantic Packing Co. v. American Exp. Co., 28 I. C. C. 244—Express Companies, §2 (c), §9 (a), §12 (a); Tariffs, §8 (b).

Atlas Brewing Co. v. P. Co., Unrep. Op. A-289—Reparation, §16 (dd), (ee ff).

Atlas Portland Cement Co. v. L. V. R. R. Co., 32 I. C. C. 487—Interstate Commerce Commission, §14 (a); Loss and Damage, §4 (a); Reparation, §3 (b), (c).

Attwood Co. v. N. C. & St. L. Ry., Unrep. Op. A-411—Equalization of Rates, §3 (r).

Atwood-Stone Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-599—Classification, §17 (4e); Through Routes and Joint Rates, §15 (jj).

Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C., 704—Evidence, §29 (f), §32 (k), §56 (b); Reparation, §7½ (i).

Auto Vehicle Co. v. P. Co., Unrep. Op. A-152—Classification, §17 (u), (v), (w); Evidence, §12 (1) (w), (x), (yz).

Auto Vehicle Co. v. C. M. & St. P. Ry. Co. Unrep. Op. A-168—Classification, §17 (z), (bb).

B. A. & A. R. R. R. Co. v. B. & S. R. R. Corp. 31 I. C. C. 583—Switch Tracks and Switching, §2 (f), §4 (v), (w), (x).

B. & M. R. R. Co. v. Hooker, 34 Sup. Ct. 526, 233 U. S. 97; 58 L. ed.—Passenger Fares and Facilities, §10 (a), (b), (c).

Baer Bros. Merc. Co. v. D. & R. G. R. R. Co., 34 Sup. Ct. 641, 233 U. S. 479; 58 L. ed.—Interstate Commerce Commission, §8½ (b); Reparation, §1½ (a), (b); Through Routes and Joint Rates, §2 (a).

Bailey v. M. P. Ry. Co. (Mo.), 171 S. W. 44—Foreign Commerce, §2 (g); Loss and Damage, §3 (j), §10 (j), §11 (h), (i), (o); Through Routes and Joint Rates, §22 (k).

Bailey v. W. U. Tel. Co. (Tex., 1914), 171 S. W. 839—Telephone and Telegraph Companies, §2 (c), (d), (e), §3 (c),)4 (a).

Balfour Quarry Co. v. S. Ry. Co., Unrep. Op. A-138—Evidence, §61 (j); Minimums, §7 (d), (e).

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and Lines, §3 (b); Blanket Rates, §10½ (e); Reasonableness of Rates, §7½ (a).

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Clough & Co. v. B. & M. R. R. (N. H. 1914), 90 Atl. 863—Overcharges, (n); Tariffs, §3 (3), (c).

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C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318—Bills of Lading, §10 (d); Crimes, §7 (d); Loss and Damage, §2 (l); Tariffs, §3 (1) (d), (2) (b), (3) (d); Undercharges, §3 (a), §7 (a).

C. of G. Ry. Co. v. Patterson, (Ala. 1915), 68 So., 513—Interstate Commerce, §5 (d).

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C. R. I. & P. Ry. Co. v. Beatty, (Okla. 1914) 141 Pac. 442—Act to Regulate Commerce, II (h); Cars and Car Supply, §33 (c); Loss and Damage, §2 (m).

C. R. I. & P. Ry. Co. v. Cramer, 34 Sup. Ct. 383, 232 U. S. 490; 58 L. ed.—Released Rates, §6 (a).

Crodus Bros. v. A. T. & S. F. R. R. Co., 29 I. C. C. 449—Differentials, §6 (a).

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Curry & Whyte Co. v. D. & I. R. Ry. Co., 30 I. C. C. 1—Discrimination, §17 (a); Equalization of Rates, §3 (a); Evidence, §69 (a), (d); Reasonableness of Rates, §2 (a); Reparation, §6 (b); §7½ (a), §10½ (a); Through Routes and Joint Rates, §18 (e).

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D & R. G. Ry. Co. v. Baer Bros. Mercantile Co. (C. C. A., 1913), 209 Fed. 577—Attorney's Fees, (f); Courts, §13 (a); Reparation, §1 (b), §17½ (a); Through Routes and Joint Rates, §1 (a), §13½ (a).

D. & R. G. R. Co. v. A. Peterson Grocery Co., (Colo. 1915), 147 Pac. 633—Loss and Damage, §7½ (a), §9 (v).

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Gamble-Robinson Commission Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-345—Reconsignment, §6 (a).

Gamble-Robinson Commission Co. v. Union Pac. Ry. Co. (Ill., 1914), 104 N. E. 666 Loss and Damage, §2 (aa), §6 (c), (d).

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G. F. & A. Ry. Ownership of Boat Line, 33 I. C. C. 632—Panama Canal Act, I (j).

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Goodner-Malone Co. v. M. V. R. R. Co., Unrep. Op. A-907—Minimums, §7 (v); Reparation, §16 (5r); Through Routes and Joint Rates, §13½ (x).

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Grain and Hay Exchange v. Penn. Co., 32 I. C. C. 409—Facilities and Privileges, §15 (4c), (4d), §18 (h); Through Routes and Joint Rates, §2 (g).

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Grain Rates from Milwaukee, 33 I. C. C., 417—Divisions, §4 (e); Evidence, §20 (cc); Ferries, (b); Through Routes and Joint Rates, §24 (j), (k).

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Graham & Co. v. C. I. Ry. Co., Unrep. Op. A-256—Procedure Before Commission, §13 (b); Reparation, §6 (g).

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Gulf C. & S. F. Ry. Co. v. Vasbinder (Tex. 1915), 172 S. W. 763—Loss and Damage, §2 (ff).

Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574—Coastwise Traffic, (a); Discrimination, §3 (u), (v); Divisions, V (a); Export Rates and Facilities, V (b); Interstate Commerce Commission, §1 (o); Procedure Before Commission, §2 (i), §5 (d); Reasonableness of Rates, §2 (p).

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Hall Lumber & Tie Co. v. C. & O. Ry. Co., Unrep. Op. A-279—Minimums, §11 (a), §5 (a); Reparation, §6 (h), (i).

Hamlen & Sons v. I. C. R. R. Co., 212 Fed. 324—Foreign Commerce, §½ (a); Loss and Damage, §6 (i); Through Routes and Joint Rates, §22 (c); Water Carrier, §6 (b).

Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71—Absorption of Charges, §5 (b); Blanket Rates, §4 (a), §6 (k), §11 (bb), (c); Classification, §20 (i); Discrimination, §4 (u), §14 (a); Evidence, §31 (h), §58 (bb), (n); Switch Tracks and Switching, §6 (e), (g); Tariffs, §7 (p); Through Routes and Joint Rates, §1 (j), §13 (dd).

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Harmon & Co. v. N. P. Ry., 33 I. C. C. 370—Released Rates, §1½ (g), (h).

Harriman Mfg. Co. v. S. Ry. Co., Unrep. Op. A-164—Classification, §17 (y); Evidence, §12 (1) (bb).

Harrington v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A-227—Passenger Fares and Facilities, §5½ (a); Special Rates and Services, (g).

Harris v. Southern Ry. Co., (S. C. 1915), 85 S. E. 158—Control and Regulation, §11 (n); Passenger Fares and Facilities, §10 (w); Tariffs, §5 (b).

Hartzell v. C. H. & D. Ry. Co., Unrep. Op. A-415—Long and Short Hauls, §5 (r).

Haskew Lumber Co. v. N. C. & St. L. Ry., 34 I. C. C. 333—Discrimination, §8 (4) (b); Tariffs, §7 (bb).

Hastings Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-399—Cars and Car Supply, §8 (d); Minimums, §4 (a).

Haverhill Box Board Co. v. B. & A. R. R. Co., 28 I. C. C. 336—Evidence, §44½ (a); Routing and Misrouting, §4 (a); Through Routes and Joint Rates, §6 (b); Transportation, §5 (c).

Hecker Cereal Co., of Milwaukee, v. C. & N. W. Ry. Co., Unrep. Op. A-593—Facilities and Privileges, §15 (pqr).

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Heger v. A. Exp. Co., Unrep. Op. A-397—Reasonableness of Rates, §28 (3a); Reparation, §16 (ww).

Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-233—Evidence, §2 (k), (l), §12 (1) (ii), §63 (m); Reasonableness of Rates, §28 (kk).

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Higbee v. Western Union Telegraph Co. (Mo. App., 1914), 166 S. W. 825—Telephone and Telegraph Companies, §2 (a).

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Hocking Valley R. Co. v. New York Coal Co., 217 Fed. 727—Discrimination, §1 (g), §2 (a); Interstate Commerce Commission, §2 (f), §4 (e).

Hoerr v. C. & N. W. Ry. Co., Unrep. Op. A-177—Routing and Misrouting, §4 (f).

Hogan Milling Co. v. Union Pac. Ry. Co. (Kan. 1914), 139 Pac. 397—Courts, §1 (b); Loss and Damage, §6 (f), (g), (h); Warehousemen, (b).

Holland v. Unitah Ry. Co., Unrep. Op. A-329—Reparation, §16 (a).

Holverscheid & Co. v. B. & O. R. R., Unrep. Op. A-299—Advanced Rates, §17 (n)

Homer Lumber Co. v. S. Ry. Co., Unrep. Op. A-204—Evidence, §58 (l); Reasonableness of Rates, §28 (hh).

Homer Lumber Co. v. S. A. L. Ry. Co., Unrep. Op. A-351—Reparation, §11 (b).

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Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98—Discrimination, §15 (a), (b), §17 (b); Equalization of Rates, §3 (l), (m), (y); Reparation, §10½ (p).

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Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319—Additional Charges and Services, (y); Classification, §7 (s); Expedited Service, (b); Facilities and Privileges, §15 (4a), (4b); Procedure Before Commission, §2 (j).

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Hudson & Rigby v. H. & B. R. R. Co., Unrep. Op. A-215—Through Routes and Joint Rates, §13 (u).

Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502—Act to Regulate Commerce, II (g); Cars and Car Supply, §7 (a), (b), §20 (a), §24 (a), §28 (a), (b); Common Carrier, §8 (d); Special Contracts, §2 (bb); Switch Tracks and Switching, §7 (a); Tap Lines, §7 (i); Through Routes and Joint Rates, §25 (b).

Hughes Creek Coal Co. v. K. & M. Ry. Co. 29 I. C. C. 671—Discrimination, §7 (j); Equalization of Rates, §3 (d); Evidence, §14 (1) (n), §18 (k), §40½ (h), §59 (j), (k), (l), §63 (q); Reasonableness of Rates, §28 (3e), §34 (a); Through Routes and Joint Rates, §4 (e), (f), §9 (d), (r), §13 (a).

Hughes Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10—Accounting, §6 (l); Differentials, §4 (b); Evidence, §59 (n); Switch Tracks and Switching, §4 (ii); Through Routes and Joint Rates, §13 (aa).

Hughes & McCoy v. C. R. I. & P. Co., Unrep. Op. A-935—Evidence, §14 (5) (3d); Reasonableness of Rates, §28 (6m); Through Routes and Joint Rates, §15 (3f).

Hull Co. v. E. J. & R. Ry. Co., Unrep. Op. A-340—Through Routes and Joint Rates, §15 (d).

Hull Vehicle Co. v. Soutehrn Ry. Co., 28 I. C. C. 619—Evidence, §30 (c), §63 (i); Reasonableness of Rates, §27¾ (a).

Hume Co. et al. v. Southern Pacific Co. et al., 33 I. C. C. 126—Refrigeration, §4 (r).

Humphreys-Godwin Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-598—Claims, §1 (f), (g), §6 (f);Reparation, §8 (m).

Hunt v. St. L. I. M. & S. Ry. Co., (Mo. 1915), 173, S. W., 61—Loss and Damage, §2 (s), §10 (i).

Huron Milling Co. v. P. M. R. R. Co., Unrep. Op. A-396—Classification, §7 (l); Facilities and Privileges, §15 (v).

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I. & G. N. Ry. Co. v. Rathblath (Tex. Civ. App., 1914), 167 S. W. 751—Bills of Lading, §11 (f); Loss and Damage, §10 (d).

Ice Rates to Long Branch 35 I. C. C. 73—Advanced Rates, §5 (2) (kk), §17 (tt).

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Illinois Leather Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-497—Classification, §17 (3i); Reconsignment, §3 (j); Through Routes and Joint Rates, §22 (f).

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Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry., 34 I. C. C. 267—Facilities and Privileges, §15 (5v).

Industrial Railways Case, 29 I. C. C. 212—Act to Regulate Commerce, II (f); Advanced Rates, §2½ (bb), (c), (j), (k), (i), §7 (1) (b); Allowances, §2 (a), §8 (5) (a), (b), (c), (d), §9 (a), (b), (c), §11 (a); Demurrage, §2 (d), §3 (c), (d); Divisions, §1 (e); Evidence, §1½ (a), §14 (5) (aa), §17 (f), §44½ (c), (d); Facilities and Privileges, §2 (a), §10 (b), (c); Reasonableness of Rates, §9 (a); Tap Lines, §2 (b), §4 (a), §7 (aa), (b), (c), (d), (e), (f), (g), §9 (c), (d), (e); Terminal Facilities, §4 (d); Transportation, §1 (c), §5 (h), (i).

Industrial Railways Case, 29 I. C. C. 218—Tap Lines, §7 (h).

Industrial Railways Case, 32 I. C. C. 129—Commodities Clause, II (k), (n), (o); Common Carrier, §3 (c), §8 (g); Divisions, §1 (k); Interstate Commerce Commission, §1 (w); Tap Lines, §2 (d). §3 (1) (a), §6 (c), §6½ (d), §7 (m), (n), (o), §9 (h), §11 (a).

Inland Empire Biscuit Co. v. G. N. Ry. Co., Unrep. Op. A-931—Classification, §17 (7w), (7x), (7y).

Inman, Akers & Inman, v. A. C. L. R. R. Co., 32 I. C. C. 146—Allowances, §11 (b); Compress Companies and Charges, (d), (e), (f), (g), (h), (i), (j),; Evidence, §2 (u).

In re Advances on Live Stock, 28 I. C. C. 332—Claims, §1 (b), §6 (c), (d); Evidence, §64 (b); Reparation, §7½ (f).

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L. & N. Ry. Co. v. Crowe, (Ky. 1913), 160 S. W. 759—Special Contracts, §2 (a).

L. & N. Ry. Co. v. Miller, (Ky. 1914), 162 S. W. 73—Loss and Damage, §2 (i); Passenger Fares and Facilities, §10 (f), (g).

L. & N. R. R. Co. v. Ohio Valley Tie Co., (Ky. 1914), 170 S. W. 633—Discrimination, §16 (a), (b), §17 (c), (d), (e); Interstate Commerce Commission, §1 (tu), §2 (h); Loss and Damage, §5 (e); Special Damages, (a).

L. & N. R. R. Co. v. Higdon, 34 Sup. Ct. 943; 234 U. S. 592; 58 L. ed—Interstate Commerce, §4 (d); Switch Tracks and Switching, §1 (a).

L. & N. R. R. Co. v. Maxwell, 35 Sup. Ct., 494, 237 U. S. 94, 59 L. ed.—Passenger Fares and Facilities, §7½ (a); Tariffs, §3 (3), (g).

L. &. N. R. Co. v. United States, 216 Fed. 672—Switch Tracks and Switching, §2 (j).

L. & N. R. R. R. Co. v. United States, 216 Fed. 673—Discrimination, §3 (w); Interstate Commerce Commission, §2 (g), §3 (j), (k), §8½ (a), §15 (h), (i), (j), (k),

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Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-953—Allowances, §8 (2½), (j); Evidence, §69 (i).

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Lewis Mfg. Co. v. D. & R. G. R. R. Co., 32 I. C. C. 488—Demurrage, §10 (a), §16 (d).

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(jj), §3 (q); Interstate Commerce, §½ (b); Passenger Fares and Facilities, §1 (a), §2 (j), §9 (a); Personal Injuries, (e).

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Merchants' & Manufacturers' Assn. v. C. C. Ry. Co., 30 I. C. C. 29—Commodity Rates, §5 (c).

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Michigan Seating Co. v. Grand Trunk Western Ry. Co., 29 I. C. C. 123—Classification, §4 (c), §22 (b).

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Miles Bros. Co. v. L. & N. R. R. Co., Unrep. Op. A-700—Reasonableness of Rates, §28 (4m).

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Moerke v. C. & N. W. Ry. Co., Unrep. Op. A-712—Cars and Car Supply, §8 (o).

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Morrison Grain Co. v. M. P. Ry. Co. (Mo., 1914), 170 S. W. 404—Loss and Damage, §2 (n), (o), §10 (f), (g); Special Contracts, §2 (jkl).

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Mott Store Co. v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 322—Courts, §11 (d); Overcharges, (o); Tariffs, §3 (1) (e).

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National Coal Co. v. B. & O. R. R. Co., 28 I. C. C. 442—Cars and Car Supply, §12 (a), §23 (a).

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National Pole Co. v. Chicago & N. W. Ry. Co., 211 Fed. 65—Courts, §6½ (a).

National Pole Co. v. M. & I. Ry. Co., 33 I. C. C. 372—Overcharges, (t); Weights and Weighing, §2½ (p).

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N. C. & St. L. Ry. v. C. V. Truitt Co., (Ga. App. 1914), 82 S. E. 465—Alternative Rates, I (f); Loss and Damage, §9 (b), §14 (a).

Nebraska Bridge Supply & Lumber Co. v. A. G. S. R. R., 35 I. C. C. 90—Classification, §17 (8c).

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Neustadt v. Lehigh Val. Ry. Co., 144 N. Y. Supp. 911—Demurrage, §1 (a); Evidence, §69 (b).

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New England Fish Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-924—Express Companies, §36 (b); Reparation, §16 (5y); Through Routes and Joint Rates, §15 (3e), §16 (h).

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Newmark Grain Co. v. Southern Pacific Co., 30 I. C. C. 431—Facilities and Privileges, §15 (w).

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New Orleans Shippers' Asso. v. I. C. R. R., 34 I. C. C. 32—Commodity Rates, §2 (v), (w); Crimes, §2 (d); Equalization of Rates, §2 (e); Overcharges, (kk).

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Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C. 645—Additional Charges and Services, (u); Advanced Rates, §17 (mm); Blanket Rates, §1 (b), §13 (m); Evidence, §13 (1), (uu), §61 (ll); Interstate Commerce Commission, §1 (dd).

New Prague Flouring Mill Co. v. M. St. L. R. R. Co., Unrep. Op. A-902—Long and Short Hauls, §4 (gg); Reasonableness of Rates, §28 (6a).

New Roads Oil Mill & Mfg. Co. v. T. & P. Ry. Co., Unrep. Op. A-120—Routing and Misrouting, §4 (e); Through Routes and Joint Rates, §15 (c).

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N. Y. C. & H. R Ry. Co. v. General Electric Co., (N. Y. Trial Term, 1914), 146 N. Y. Supp. 322—Act to Regulate Commerce, II (p); Crimes, §7 (c); Interstate Commerce Commission, §3 (c); Special Contracts, §2 (e), (f); Terminal Facilities, §4 (a), (b), (c).

N. Y. C. & H. R. R. Co. v. Gen. Electric Co., 153 N. Y. S. 478—Allowances, §8 (5), (o), (p), (q), §12 (2), (b).

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N. Y. N. H. & H. R. R. v. Porter, (Mass. 1915), 108 N. E. 499—Demurrage, §9 (b).

N. Y. P. & N. Ry. Co. v. Peninsula Produce Exchange, (Md. 1914), 89 Atl. 433—Bills of Lading, §11 (b); Courts, §12 (a); Loss and Damage, §17 (a).

New York Produce Exchange v. N. Y. C. & H. R. R. Co., 32 I. C. C. 212—Classification, §17 (6n); Discrimination, §3 (z), §4 (z); Evidence, §14 (1), (aa), (ff), (gg), (5), (mm); Experimental Rates, (a); Export Rates and Facilities, V (f); Interstate Commerce Commission, §1 (x), §8½ (f), (g), (k); Reasonableness of Rates, §1 (a), §7½ (s); Season Rates, (a), (c).

New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437—Allowances, §8 (2), (b), (c), (4½), (e); Cars and Car Supply, §7 (d), §8 (g); Evidence, §18 (n), (o), §63 (y); Facilities and Privileges, §2½ (a), (b); Interstate Commerce, §4 (i); Special Rates and Services, (i), (k), (n).

Nichols & Cox Lumber Co. v. United States, 212 Fed. 588—Crimes, §5 (a), §10 (a), §15 (a); Facilities and Privileges, §15 (f), (g); Tariffs, §6 (a); Through Routes and Joint Rates, §18 (b).

Nickey & Sons Co., Inc., v. M. & N. A. R. R. Co., Unrep. Op. A-600—Long and Short Hauls, §5 (cc); Reasonableness of Rates, §12½ (h).

Nitro Powder Co. v. W. S. R. R., 35 I. C. C. 77—Explosives, (j), (k).

Nix & Co. v. S. Ry. Co., 31 I. C. C. 145—Differentials, §2½ (f); Evidence, §14 (5), (z), §16 (e), §29 (c); Long and Short Hauls, §13 (i); Minimums, §1 (d); Reasonableness of Rates, §28 (3s); Reparation, §10½ (n).

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Nomsen v. P. C. C. & St. L. Ry. Co., Unrep. Op. A-136—Evidence, §12 (1), (o), §63 (k).

Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109—Alternative Rates, I (d), (e); Bills of Lading, §11 (a); Released Rates, §1½ (a), (b), (c), (d), §2 (a), §3 (a), §5 (a), (b), (c), (d).

Norcross-West Marble Co. v. Rutland R. R. Co., Unrep. Op. A-713—Classification, §17 (5p); Evidence, §47 (p).

Norfolk Southern R. Co. v. White-Hurst, (Va. 1915), 85 S. E. 458—Special Contracts, §2 (s), (t), (u).

Norfolk Trucker's Exch., Inc., v. Norfolk Southern R. Co. (Va. 1914), 82 S. E. 92—Courts, §1 (f); Loss and Damage, §6 (l), §7 (e), §10½ (a); Telephone and Telegraph Companies, §2 (f), §3 (b).

Norfolk & W. R. Co. v. Stuart Draft Co., 109 Va. 184, 63 S. E. 415—Loss and Damage, §2 (mm).

Norman Lumber Co. v. L. & N. Ry. Co., 29 I. C. C. 565—Absorption of Charges, §3 (b); Accounting, §5 (f); Bridge Tolls, I (f), (g), (h), (i), II (c); Differentials, §5 (a), §8 (n); Evidence, §28 (a), (b), (c), §43½ (b); Reasonableness of Rates, §28 (3b), §36 (a).

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Northbound Rates on Hardwood, 32 I. C. C. 521—Advanced Rates, §3 (ii), (y), §5 (2), (dd), §17 (aa); Classification, §11 (f); Evidence, §13 (1), (dd), §14 (5),

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Northern Mercantile Co. v. S. I. Ry. Co., Unrep. Op. A-207—Procedure Before Commission, §1½ (a).

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Northern Wood Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. A-200—Minimums, §7 (g).

North Vernon Lumber Co. v. I. C. R. R. Co., Unrep. Op. A-688—Evidence, §14 (5), (ff); Reasonableness of Rates, §28 (4i).

Northwest Auto Supply Co. v. S. I. Ry. Co., Unrep. Op. A-158—Classification, §5 (m); Reparation, §16 (z).

Northwestern Compo-board Co. v. A. & W. Ry. Co., Unrep. Op. A-663—Classification, §17 (4o).

Northwest Coal Co. v. U. P. Ry. Co., Unrep. Op. A-665—Weights and Weighing, §7 (a).

Northwestern Feed Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-847—Reparation, §8 (gg), (hh), §16 (5i).

Northwestern Marble & Tile Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-190—Reasonableness of Rates, §28 (gg).

Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co., 28 I. C. C. 237—Alternative Rates, I (c); Minimums, §7 (b), (c).

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Pacific Express Co. v. Krower, (Tex. 1914), 163 S. W. 9—Express Companies, §8 (1), (b); Loss and Damage, §2 (h).

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Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370; §36 U. S. 351, 59 L. ed.—Act to Regulate Commerce, II (a); Interstate Commerce Commission, §5 (b); Terminal Facilities, §1 (f), (g), §3 (k), §11 (c).

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Shinn & Co. v. N. P. Ry. Co., Unrep. Op. A-107—Reparation, §6 (cd).

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Sioux City Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-401—Routing and Misrouting, §4 (m); Through Routes and Joint Rates, §22 (d).

Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 31 I. C. C. 482—Classification, §17 (5d); Reasonableness of Rates, §28 (3p).

Skinner v. C. B. & Q. R. R. Co., Unrep. Op. A-128—Discrimination, §4 (i).

Slider v. S. Ry. Co., Unrep. Op. A-425—Discrimination, §4 (k).

Sligo Iron Store Co. v. St. L. & S. F. R. R. Co., 28 I. C. C. 616—Classification, §10 (c), §17 (l); Evidence, §12 (1), (i); Reparation, §6 (bb).

Sloane v. S. P. Co., 33 I. C. C. 509—Classification, §4½ (c).

Sloane v. S. P. Co., Unrep. Op. A-509—Classification, §17 (3j).

Sloane v. S. P. Co., Atlantic S. S. Lines, Unrep. Op. A-699—Classification, §20 (n), (o); Evidence, §14 (5), (hh).

Sloop v. Delano (Mo. 1914), 170 S. W. 385—Tariffs, §3 (2), (f).

Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597—Differentials, §7 (a); Equalization of Rates, §3 (o), §4 (5), (a); Evidence, §2 (p), (q), §18 (i), (u), §22 (a), §52 (j), §61 (s); Reparation, §7½ (i).

Smith Lumber Co. v. S. P. Ry. Co., Unrep. Op. A-389—Reparation, §16 (vv); Through Routes and Joint Rates, §13 (w), §16 (f).

Smith Mfg. Co. v. C. & N. W. Ry. Co., Unrep. Op. A-318—Through Routes and Joint Rates, §15 (i).

Smith System Heating Co. v. G. N. Ry. Co., Unrep. Op. A-296—Cars and Car Supply, §8 (c); Minimums, §7 (j).

Smith v. G. C. & S. F. Ry. Co., (Mo. App. 1914), 164 S. W. 132—Interstate Commerce, §3 (a); Transportation, §11 (a).

Smurthwaite Grain & Milling Co. v. O. S. L. R. R. Co., Unrep. Op. A-295—Reasonableness of Rates, §28 (oo).

Snow Lumber Co. v. R. C. & S. Ry., 33 I. C. C. 587—Discrimination, §5 (o).

Sondheimer Company v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-737—Export Rates and Facilities, V (g).

Sonken-Galamba Iron & Metal Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-718—Classification, §17 (5t); Equalization of Rates, §3 (pp); Evidence, §61 (z); Reasonableness of Rates, §28 (4s).

South Covington & Cincinnati Street Ry. Co. v. City of Covington, 35 Sup. Ct. Rep. 158; 235 U. S. 537 59 L. ed.—Bridge Tolls, I (m).

Southern Commutation Fares, 35 I. C. C. 36—Passenger Fares and Facilities, §5 (k).

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Southern Lumber Co. v. L. R. & N. Co., Unrep. Op. A-566—Reconsignment, §2 (e).

Southern Pac. Co. v. Frye & Bruhn, (Wash., 1914), 143 Pac. 163—Act to Regulate Commerce, II (r).

S. P. Co. Ownership of Schooner Pasadena, 33 I. C. C. 476—Panama Canal Act, (h), (i).

S. P. Co. v. U. S. 35 Sup. Ct., 573; 237 U. S. 202, 59 L. ed.—Land Grant Railroads, (b); Through Routes and Joint Rates, §22 (n).

So. Pac. Co. v. Frye & Bruhn, (Wash., 1914), 143 Pac. 163—Cars and Car Supply, §18 (p), (u), (v); Courts, §11 (e), (l); Interstate Commerce Commission, §2 (i), §9 (b); Loss and Damage, §5 (c); Special Contracts, §2 (n); Tariffs, §3 (1), (f), (k), (2), (d), (l); Undercharge, §3 (b).

S. Ry. Co. v. North Shore Cotton Co. (Miss., 1914), 64 So. 965—Loss and Damage, §3 (g).

S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77—Common Carrier, §8 (j); Discrimination, §3 (gg); Panama Canal Act, (ee), (ff), (gg), (hh), (ii), (jj), (kk).

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Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 29 I. C. C. 28—Discrimination, §11 (b); Long and Short Hauls, §5 (q); Procedure Before Commission, §2 (a); Proportional Rates, III (b).

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Spada v. Pennsylvania R. Co. (N. J.), 92 Atl. 379—Loss and Damage, §2 (qr), (t), §3 (h), §9 (d), (h), §11 (f), (l), §13¾ (d).

Spartanburg Chamber of Commerce v. S. Ry. 34 I. C. C. 484—Long and Short Hauls, §7 (x), §9 (p); Through Routes and Joint Rates, §13 (ddd).

Spiegle v. S. Ry. Co., 32 I. C. C. 687—Discrimination, §15 (f), (g); Facilities and Privileges, §15 (5a), (5b); Reparation, §10½ (x).

Spiegle & Co. v. S. Ry. Co., 34 I. C. C. 448—Facilities and Privileges; §15 (5x).

Spokane Cycle & Supply Co. v. S. I. Ry. Co., Unrep. Op. A-461—Classification, §17 (3a); Through Routes and Joint Rates, §15 (t).

Spring Coal Co. v. N. & W. Ry. Co., Unrep. Op. A-536—Demurrage, §2 (f); Embargo, (b).

Springfield Commercial Assn. v. P. R. R. 28 I. C. C. 511—Basing Points and Lines, §1 (n), §2 (g); Blanket Rates, §13 (a); Bridge Tolls, I, (c); Discrimination, §5 (g); Evidence, §2 (h), §20 (g), (h).

Springfield Traffic Bureau v. St. L. & S. F. R. R. Co., 29 I. C. C. 600—Evidence, §14 (1), (m), §63 (q); Long and Short Hauls, §9 (c).

Squire Dingee Co. v. C. & E. I. R. R. Co., Unrep. Op. A-440—Minimums, §5 (b).

Stacy Fruit Co. v. Northern Express Co., Unrep. Op. A-868—Additional Charges and Services, (bb); Reparation, §16 (5k), (5l).

Standard Grain & Milling Co. v. C. & N. W. Ry. Co., Unrep. Op. A-454—Classification, §17 (yy).

Standard Mirror Co. v. P. R. R. Co., 32 I. C. C. 261—Reparation, §6 (r), (s), (t).

Standard Mirror Co. v. S. Ry. Co., Unrep. Op. A-788—Classification, §10 (i); Reparation, §16 (4z).

Standard Oil Co. (Ky.), v. A. C. L. R. R. Co., Unrep. Op. A-163—Reparation, §16 (z).

Standard Oil Co. v. Pennsylvania Co., 29 I. C. C. 524—Long and Short Hauls, §5 (d), §9 (a).

Standard Oil Co. v. P. Co., Unrep. Op. A-485—Classification, §17 (3f); Evidence, §47 (k).

Standard Pharmacal Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-111—Classification, §17 (oo); Evidence, §12 (1), (n).

Standard Steel Co. v. A. G. S. R. R. Co., Unrep. Op. A-549—Reparation, §8 (h), (i).

Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 208—Advanced Rates, §13 (e); Blanket Rates, §6 (l).

Stange Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-244—Evidence, §12 (1), (kk); Export Rates and Facilities, III, (d).

Stanton Co. v. N. P. Ry. Co,, Unrep. Op. A-226—Reparation, §16 (z).

State v. Arkansas Lumber Co., (Mo. 1914), 169 S. W. 145—Evidence, §10 (b); Monopolies, (a).

State v. Kansas City Stock Yards Co. of Mo. (Kan., 1915), 145 Pac. 831—Interstate Commerce, §½ (c), §3 (g); Stock Yard Companies, (d), (e).

State of South Dakota v. A. & V. V. Ry. Co., Unrep. Op. A-679—Reparation, §16 (4g).

State v. H. B. & T. Co. (Tex. Civ. App., 1914), 166 S. W. 83—Terminal Facilities, §7 (a); Through Routes and Joint Rates, §3½ (a).

Stearns & Culver Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-320—Long and Short Hauls, §4 (d); Through Routes and Joint Rates, §15 (d).

Steinhardt & Co. v. T. & P. Ry. Co., Unrep. Op. A-325—Evidence, §47 (h).

Steinhardt & Co. v. T. & P. Ry. Co., Unrep. Op. A-338—Reparation, §16 (a), (nn).

Sterling Pickling Works v. W. R. R. Co., Unrep. Op. A-348—Reparation, §16 (a), (qqrr).

Stevens, Fryberger & Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-237—Evidence, §61 (l).

Stewart & Son v. C. R. I. P. Ry. Co. (Ia. 1915), 151 N. W. 485—Loss and Damage, §13⅝ (a); Special Contracts, §2 (p), §5 (b).

Stewart v. C. & S. Ry. Co. Unrep. Op. A-341—Reparation, §16 (a).

Stewart v. M. K. & T. Ry. Co., Unrep. Op. A-297—Evidence, §47 (e); Reasonableness of Rates, §28 (pp).

Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co., 29 I. C. C. 120—Classification, §17 (oo); Long and Short Hauls, §2 (a), §5 (c), §9 (h), §13 (e); Reparation, §10½ (d).

Stineman Coal Mining Co. v. Pennsylvania Ry. Co. (Pa., 1913), 88 Atl. 761—Cars and Car Supply, §12 (c); Courts, §1 (a).

Stock & Sons v. C. M. & St. P. Ry., 34 I. C. C. 481—Through Routes and Joint Rates, §13 (ccc).

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Stone & Son v. S. Ry. Co., 29 I. C. C. 699—Blanket Rates, §10½ (d); Reparation, §½ (c), §6 (o).

Storage Charges in C. F. A. Territory, 28 I. C. C. 372—Classification, §14 (b); Explosives, (a), (b); Storage, §2 (b), (c).

Storm Lake Tub & Tank F. v. M. & St. L. Ry., (D. C.), 209 Fed. 895—Loss and Damage, §2 (x).

Strauss & Co. v. S. P. Ry. Co., Unrep. Op. A-114—Reparation, §16 (m).

Straw Rates from Stations in Missouri to Alton, Ill., 29 I. C. C. 562—Advanced Rates, §14 (a), §17 (b); Evidence, §3 (c), §13 (1), (b); Reasonableness of Rates, §2 (c), §14 (c), §15½ (c).

Streever Lumber Co. v. C. M. & St. P. Ry., 34 I. C. C. 1—Interstate Commerce Commission, §1 (ee), (ff).

Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623—Any-Quantity Rates, I, (g), (h), II, (m); Blanket Rates, §6 (p), §11 (e); Classification, §5 (q), §17 (3q); Evidence, §29 (h), §31 (g), (o), (p), §43 (i), (j), §58 (mm), (y), §68 (h); Procedure Before Commission, §1 (f), §2 (f); Reasonableness of Rates, §10 (a), §16 (i).

Stukes v. Southern Expr. Co. (S. C. 1914), 80 S. E. 612—Claims, §11 (a); Loss and Damage, §3 (d).

Sugar Rates from New Orleans, 32 I. C. C. 606—Distance Rates, §1 (h); Long and Short Hauls, §5 (tt).

Sulzberger & Sons Co. v. S. P. Co., Unrep. Op. A-400—Advanced Rates, §5 (2), (f); Commodity Rates, §2 (f); Long and Short Hauls, §5 (m).

Sulzberger & Sons Co. v. S. P. Co., Unrep. Op. A-790—Classification, §17 (7a), (7b); Evidence, §61 (hh).

Sunderland Bros. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-705—Long and Short Hauls, §11 (c); Through Routes and Joint Rates, §15 (qq), §18 (g).

Sunderland Bros. Co. v. C. & A. R. R. Co., Unrep. Op. A-875—Reconsignment, §4 (d); Reparation, §9 (b); Through Routes and Joint Rates, §19 (c).

Sunny Brook Distillery, Inc., v. Pa. Terminal Ry. Co., Unrep. Op. A-717—Reparation, §9 (a); Tariffs, §6 (b).

Swedish Iron & Steel Corporation v. Bush Terminal Co., Unrep. Op. A-323—Bills of Lading, §10 (c); Reduced Rates, §5 (c); Reparation, §7½ (g).

Swift & Co. v. P. R. R., 29 I. C. C. 464—Bills of Lading, §6 (a); Through Routes and Joint Rates, §2 (b), §4 (c), §11 (2), (d).

Swift Beef Co., Ltd., v. C. P. Ry. Co., Unrep. Op. A-284—Absorption of Charges, §3 (d); Routing and Misrouting, §7 (d); Switch Tracks and Switching, §9 (b).

Swift & Co. v. C. G. W. R. R. Co., Unrep. Op. A-789—Blanket Rates, §6 (t); Reasonableness of Rates, §28 (5e); Reparation, §8 (aa), (bb).

Swift & Co. v. S. A. Ry., Unrep. Op. A-787—Classification, §17 (6z); Evidence, §61 (gg); Reparation, §11 (d), §16 (4y).

Switching at Arcade, N. Y., 30 I. C. C. 501—Resonableness of Rates, §2 (k); Switch Tracks and Switching, §4 (p); Terminal Facilities, §5 (b), (g).

Switching at Baltimore, Md., 30 I. C. C. 581—Absorption of Charges, §3 (k); Advanced Rates, §2½ (h); Reasonableness of Rates, §8¾ (a); Switch Tracks and Switching, §3 (h), §4 (o), (q), §12 (b); Terminal Facilities, §3 (d).

Switching at Galesburg, Ill., 31 I. C. C. 294—Advanced Rates, §1 (1), (c), (4), (e); Switch Tracks and Switching, §2 (g), §4 (s), §6 (b), (c), (d); Through Routes and Joint Rates, §1 (o), (v).

Switching Charges at Milwaukee, Wis., 32 I. C. C. 509—Switch Tracks and Switching, §6 (h), (i).

Switching Charges on Coke and Coal, 32 I. C. C. 444—Advanced Rates, §19 (e); Through Routes and Joint Rates, §4 (o), §13 (ii).

Tampa Board of Trade v. A. & V. Ry. Co., 33 I. C. C. 457—Water Carrier, §6 (u).

Tampa Board of Trade v. L. & N. R. R. Co., 30 I. C. C. 377—Evidence, §14 (3), (l); Through Routes and Joint Rates, §12 (a); Water Carrier, §3 (e), §6 (a).

Tanners' Supply Co. v. L. & N. R. R. Co., 32 I. C. C. 394—Classification, §22 (l); Evidence, §52 (u).

Tap Line Case, 31 I. C. C. 490—Allowances, §8 (½), (b), §13 (b); Distance Rates, §1 (f); Division, V, (d); Passenger Fares and Facilities, §12 (h), (k); Tap Lines, §2 (c), §7 (q).

Tap Line Case, 34 I. C. C. 116—Branch Lines, §1 (m); Special Contracts, §4 (1), (e).

Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205—Any Quantity Rates, I, (a); Basing Points and Lines, §1 (i); Classification, §5 (a), (b), (c), (d), (e), §13 (a); Evidence, §14 (5), (b), §63 (d), (e); Reparation, §7½ (d), (k); Through Routes and Joint Rates, §13 (j).

Taylor v. C. B. & Q. R. R. Co., Unrep. Op. A-300—Tariffs, §7 (i).

T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 234 U. S., 58 L. ed.—Cars and Car Supply, §6 (a), (b); Interstate Commerce Commission, §2 (b), (bb); Reparation, §1 (a); Through Routes and Joint Rates, §1 (i).

T. & P. Ry. Co. v. Dickson Bros. (Tex. Civ. App., 1914), 167 S. W. 33—Tariffs, §3 (1) (c).

Templeton & Sons v. C. I. & S. R. R. Co., Unrep. Op. A-362—Evidence, §47 (j); Reparation, §16 (tt).

Tennessee Copper Co. v. L. & N. R. R. Co., Unrep. Op. A-523—Claims, §1 (e); Classification, §17 (3k).

Tennessee Lumber Mfg. Co. v. B. D. R. R. Co., Unrep. Op. A-448—Classification, §17 (ww).

Terrari v. N. Y. C. & H. R. R. R. Co. (1914), 147 N. Y. S. 376—Loss and Damage, §10 (b), (c).

Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569—Advanced Rates, §17 (g); Basing Points and Lines, §1 (r); Blanket Rates, §2 (a); Classification, §20 (e); Commodity Rates, §2 (b); Discrimination, §3 (g), §8 (5), (b), (c); Evidence, §13 (1), (f), §14 (1), (d), (2), (d), (3), (c), (d), (5), (i), (j), (k), (m), §20 (k), §40½ (b); Export Rates and Facilities, III (c); Long and Short Hauls, §4½ (a), §7 (b), §10 (a); Reasonableness of Rates, §28 (j), (k), (l).

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Texas Midland R. R. v. Becker & Cole (Tex. 1915), 171 S. W. 1025—Loss and Damage, §6 (x), (dd).

Texas Refining Co. v. A. & V. Ry. Co., 32 I. C. C. 192—Classification, §11 (d), §17 (4x), (6m); Reparation, §12 (a).

The Cummins Amendment, 33 I. C. C. 682—Advanced Rates, §2½ (w); Evidence, §52 (y); Loss and Damage, §2½ (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), §9 (u), §11 (q), (r).

The Essex Terminal Railway, File No. 24129—Adjacent Foreign Country, §1 (c), (d); Tap Lines, §4 (d); Tariffs, §1 (b).

The Five Per Cent Case, 31 I. C. C. 351—Accounting, §3 (b), §5 (g), (h), (i), (j); Act to Regulate Commerce, I, (c); Advanced Rates, §2½ (l), (m), §3 (i), (j), (cc), §5 (4), (o), §7 (2), (d), (7), (a), (b), (f), §8½ (b), §15 (b), §21 (a), (b); Cars and Car Supply, §10½ (a); Class Rates, §2 (w), (x); Common Carrier, §8 (f); Evidence, §13 (1), (p), (1½), (a), §17 (h), §18 (aa), (bb), §58 (s), (u), (jj); Expidited Service, (a); Financial Operation, §1 (e), (f); Interstate Commerce Commission, §1 (j); Passenger Fares and Facilities, §2 (k), (l); Reasonableness of Rates, §30 (a), (b), (c).

The Five Per Cent Case, 32 I. C. C. 325—Advanced Rates, §2½ (p), (q), (r), (s), (t), §3 (v), §6 (6), (b), §7 (7), (d).

The Illinois Coal Cases, 32 I. C. C. 659—Blanket Rates, §20 (b); Evidence, §16 (d), §53 (a); Reasonableness of Rates, §2 (t), (u).

The Twin Cities Cases, 33 I. C. C. 577—Differentials, §2½ (h).

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Thomas & Osborn v A. T. & S. F. Ry. Co., Unrep. Op. A-956—Weights and Weighing, §2½ (q).

Thomas Iron Co. v. P. R. R. Co., 28 I. C. C. 608—Evidence, §14 (1), (e); Long and Short Hauls, §9 (e), (f).

Thompson v. A. T. & S. F. Ry. Co., 31 I. C. C. 138—Narrow Gauge Railroads, (a); Through Routes and Joint Rates, §13 (z).

Thronhill Wagon Co. v. N. & W. Ry. Co., Unrep. Op. A-383—Long and Short Hauls, §5 (k).

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Toledo Produce Exchange v. A. A. R. R. Co., 30 I. C. C. 498—Equalization of Rates, §2 (d).

Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-588—Cars and Car Supply, §8 (j); Minimums, §4 (b).

Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-921—Cars and Car Supply, §8 (s), (t).

Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433—Basing Points and Lines, §1

(m), §2 (f); Evidence, §2 (e); Procedure Before Commission, §4 (a); Through Routes and Joint Rates, §4 (d).

Tradewell v. C. & N. W. Ry. 150 Wis. 259, 136 N. W. 794—Loss and Damage, §2 (x).

Traffic Assn. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484—Classification, §17 (h); Evidence, §2 (g), §8 (b), §14 (2), (b), (5), (g).

Traffic Bureau of Knoxville, Tenn., v. A. & V. Ry. Co., Unrep. Op. A-559—Classification, §16 (r), (s), (t), (u), §17 (4a).

Traffic Bureau of Knoxville v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-695—Classification, §17 (5k); Evidence, §13 (1), (ll), §14 (5), (gg); Reasonableness of Rates, §28 (4k).

Traffic Bureau of Nashville, Tenn., v. L. & N. Ry. Co., 28 I. C. C. 533—Equalization of Rates, §4 (1), (a); Evidence, §8 (c), (d), §14 (5), (h), §17 (d), §18 (f), §43 (b), §58 (h), (i), (j); Reasonableness of Rates, §28 (hi); Switch Tracks and Switching, §4 (i); Terminal Facilities, §6 (b).

Transcontinental Rates from Group F., 28 I. C. C. 1—Advanced Rates, §2½ (b); Evidence, §2 (a); Through Routes and Joint Rates, §6 (a), §13 (b).

Transcontinental Commodity Rates, 32 I. C. C. 449—Absorption of Charges, §1 (c); Advanced Rates, §1 (1), (e), §3 (aa), §17 (jj), §18 (½), (a), §19 (f), §19½ (b); Discrimination, §4 (aa), §18 (c), §8 (1), (b), (5), (d), (e); Evidence, §2 (w); Evidence, §14 (5), (pp), (qq); Long and Short Hauls, §2½ (g); Panama Canal Act, (k); Reasonableness of Rates, §2 (bb), §28 (4e), (4f), (5a).

Transit Privileges at Atchison and Leavenworth, Kans., Unrep. Op. A-809—Facilities and Privileges, §15 (5d).

Transit Privileges on Carload Shipments of Fish, Unrep. Op. A-765—Facilities and Privileges, §15 (4k); Weights and Weighing, §2½ (o).

Transit Privileges on Grain and Grain Products, Unrep. Op. A-879—Facilities and Privileges, §15 (5g).

Transit Rates on Logs and Staves at Alexandria, La., 34 I. C. C. 169—Facilities and Privileges, §15 (5r), (5s), (5t), (5u).

Transit Regulations on Grain and Dried Beans, 32 I. C. C. 38—Divisions, §4 (c), (f); Facilities and Privileges, §15 (stu).

Transportation and Disposal of Waste Material, 34 I. C. C. 337—Additional Charges and Services, (cc), (dd), (ee), (ff).

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Pacific Coast. Rates. Evidence, §2 (w).
Pacific Coast Terminal from Durham and Chickamauga, Ga. Coke. Minimums, §7 (w).
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Pacific Terminals. Rates. Advanced Rates, §17 (s).
Paducah, Ky., from Central Freight Asso. and Western Trunk Line Territories. Beans, Canned Goods, Cabbages, Onions and Potatoes. Bridge Tolls, II (a).
Paducah, Ky., from Mississippi and Louisiana and Arkansas, south of the C. R. I. & P. Ry. Points. Lumber. Differentials, §6 (b).
Paducah, Ky., to Brookport, Ill. Logs and Lumber. Through Routes and Joint Rates, §13 (cc).
Panama Canal. Rates. Evidence, §2 (z).
Paris, Tenn., to New Orleans, La. Tobacco. Discrimination, §4 (h).
Paris, Tenn., to New Orleans, La. Tobacco. Reasonableness of Rates, §28 (t).
Parkersburg, W. Va., from Little Hocking and Marietta, Ohio. Bridge Tolls, I (q).
Pecos Valley from Texas and Louisiana. Lumber. Long and Short Hauls, §7 (w).
Pella, Iowa, to Mississippi River. Butter, Dressed Poultry and Eggs. Reasonableness of Rates, §28 (5n).
Pennsylvania. Grain. Facilities and Privileges, §15 (4v).
Pennsylvania. Slag. Additional Charges and Services, §5 (cc).
Pennsylvania to Lombard, Glen Ellyn, Wheaton and West Chicago, Ill. Anthracite Coal, Bituminous Coal and Coke. Equalization of Rates, §3 (k).
Pennsylvania to Philadelphia, Pa., Wilmington, Del. and Baltimore, Md. Bituminous Coal. Advanced Rates, §17 (ii).
Pennsylvania to Sheridan, Wyo., Billings, Butte, Helena, Great Falls, Misoula, Livingston, Bozeman, and Lewiston, Mont. Concord Grapes, C. L. Blanket Rates, §10½ (p).
Pensacola, Fla., to Lynchburg, Va. Cypress Lumber. Classification, §17 (5v).
Pensacola, Fla., to Lynchburg, Va. Cypress Lumber. Reasonableness of Rates, §28 (4t).
Pensacola, Fla., to Chicago, Ill. Rosin. Reconsignment, §3 (m).
Peoria, Ill., from Halls and Albany, Mo. Straw. Evidence, §21½ (a).
Peoria, Ill., from Halls and Albany, Mo. Straw. Reasonableness of Rates, §28 (6o).
Peoria, Ill. Rates. Proportional Rates, §1 (i).
Peoria, Ill., to Birmingham, Ala. Oats. Overcharges, §1 (y).
Peoria, Ill., to Birmingham, Ala. Oats. Routing and Misrouting, §7 (z).
Peoria, Ill., to and from the East. Rates. Basing Points and Lines, §1 (n).
Peoria, Ill., to New Prague, Minn. Soft Coal. Long and Short Hauls, §4 (gg).
Peoria, Ill., to New Prague, Minn. Soft Coal. Reasonableness of Rates, §28 (6a).
Peru, Ind., to Joliet, Ill. Rates. Electric Lines, §2 (a).
Philadelphia, Pa. Rates. Facilities and Privileges, §14¾ (b).
Philadelphia, Pa., to Brills, N. J. Class Rates. Through Routes and Joint Rates, §6 (g).
Philadelphia, Pa., to Covington, Va. Wood Pulp. Reasonableness of Rates, §28 (5j).
Philadelphia, Pa., to Covington, Va. Wood Pulp. Reasonableness of Rates, §32½ (f).
Philadelphia, Pa., to Washington. Rates. Class Rates, §2 (j).
Phillipsdale, R. I., to New York, N. Y. Goods. Loss and Damage, §6 (s).
Phillipsdale, R. I., to New York, N. Y. Rates. Interstate Commerce, §3 (b).

Phoenix, Ariz., from Points East of Chicago, Ill. Merchandise. Class Rates, §2 (y).
Pineville, La., to New Orleans, La. Lumber. Export Rates and Facilities, §3 (h).
Pinners Point, Va. Rates. Demurrage, §17 (d).
Piqua, Ohio, from Eleanor and Surrey, Ill. Logs. Long and Short Hauls, §5 (r).
Pittsburg, Pa. Cars. Terminal Facilities, §1 (b).
Pittsburg, Pa., coal district to the Youngstown District. Coal. Blanket Rates, §10½ (b).
Pittsburg, Pa. Grain and Grain Products. Facilities and Privileges, §15 (4c).
Pittsburg, Pa. Rates. Switch Tracks and Switching, §4 (j).
Pittsburg, Pa. Rates. Switch Tracks and Switching, §4 (k).
Pittsburg, Pa. Terminals. Terminal Facilities, §3 (b).
Pittsburg, Pa., to Adrian, Mich. Wire. Equalization of Rates, §3 (ww).
Pittsburg, Pa., to Delphos, O. Black-iron Sheets. Equalization of Rates, §3 (vv).
Pittsburg, Pa., to Greensboro, Highpoint, Winston-Salem, Thomasville, Elkin, Kernersville, Silver City, Ronda, Charlotte, Salisbury, Lexington and Mount Airy, N. C. Rates. Through Routes and Joint Rates, §15½ (b).
Pittsburg, Pa. Rates. Interstate Commerce Commission, §1 (e).
Pittsburg, Pa. Rates. Passenger Fares and Facilities, §2 (a).
Pittsburg, Pa., to Chicago. Rates. Basing Points and Lines, §1 (x).
Pleasanton, Kan. Corn. Reasonableness of Rates, §28 (4u).
Pleasanton, Kan., to Kansas and Missouri Points. Grain. Facilities and Privileges, §15 (4j).
Pleasanton, Kans. Wheat. Reasonableness of Rates, §28 (4u).
Poley, Ala., to Altoona, Pa. and Nicholson, Pa. Lumber. Reconsignment, §3 (o).
Poplarville, Miss., to Benton Ridge, O. Dressed Yellow Pine Lumber. Through Routes and Joint Rates, §13 (ss).
Poplar Bluff, Mo., to Coffeyville, Kan. Lumber. Overcharges, §1 (aa).
Poplar Bluff, Mo., to Coffeyville, Kans. Lumber. Routing and Misrouting, §4 (w).
Port Aransas, Tex. Rates. Facilities and Privileges, §16 (b).
Port Arthur, Tex. Coal. Demurrage, §15 (g).
Porter, Ind., to Iowa, Minnesota and South Dakota Points. Rates. Through Routes and Joint Rates, §24 (o).
Porterville, Ala., to Chattanooga, Tenn. Lumber. Advanced Rates, §17 (c).
Portland, Ore., from New York and Syracuse, N. Y. Automobiles. Classification, §5 (j).
Portland, Ore., to Hoquiam, Wash. Motorcycles. Class Rates, §2 (bb).
Portland, Oreg., to Hoquiam, Wash. Motorcycles. Reparation, §16 (5u).
Portland, Ore., to Joliet, Ill. Toe Calks. Evidence, §30 (o).
Portland, Ore., to Joliet, Ill. Toe Calks. Evidence, §30 (q).
Portland, Oreg. Rates. Differentials, §8 (t).
Port Royal, S. C., to Savannah, Ga. Rates. Passenger Fares and Facilities, §1 (d)
Potomac Yard, Va., to Alexandria, Va. Rates. Switch Tracks and Switching, §4 (b).
Poughkeepsie, N. Y., to Spokane, Wash. Candy Cough Drops. Classification, §17 (7y).
Poultney, Vt., to C. F. A. Territory. Crushed Slate. Classification, §17 (uu).
Prescott, Ariz., from Milwaukee and Manitowac, Wis., and Chicago and Cragin, Ill. Barley Malt. Reparation, §16 (5m).
Provo, Ark., to Vesper, Kans. Oak Lumber. Reparation, §16 (4x).
Provo, Ark., to Vesper, Kan. Oak Lumber. Through Routes and Joint Rates, §13 (uu).
Provo, Utah, to Muskogee and McAlester, Okla. Green Fruit (except apples). Blanket Rates, §8 (m).

Pueblo, Colo. Rates. Classification, §20 (h).
Purshall, W. Va., to Cuyahoga Falls, O. Trolley Ties. Evidence, §12 (1), (vv).
Puyallup, Wash., to Watertown, So. Dakota. Raspberries. Additional Charges and Services, §5 (bb).
Puyallup, Wash., to Watertown, S. D. Raspberries. Reparation, §16 (5k).
Puyallup, Wash., to Watertown, S. D. Raspberries. Reparation, §16 (5l).

Quincy Adams, Mass., to Woodlawn, N. Y. Building Granite. Released Rates, §1½ (f).
Quincy, Ill., from Halls and Harbor, Mo. Straw. Evidence, §21½ (a).
Quincy, Ill., from Halls and Harbor, Mo. Straw. Reasonableness of Rates, §28 (6o).
Quincy, Ill. Rates. Equalization of Rates, §4 (3), (a).
Quincy, Ill., to Points in Trunk Line and Central Freight Association Territory. Rates. Advanced Rates, §5 (8), (f).
Quinlan, Okla., to Amsterdam and South Amsterdam, N. Y. Broom Corn. Cars and Car Supply, §11 (a).
Quinlan, Okla., to Amsterdam and South Amsterdam, N. Y. Broom Corn. Facilities and Privileges, §15 (5j).
Quinlan, Okla., to Amsterdam and South Amsterdam, N. Y. Broom Corn. Facilities and Privileges, §18 (k).

Ralston, Neb., from Arkansas, Louisiana and Texas Points. Yellow Pine Lumber. Additional Charges and Services, §5 (p).
Ralston, Nebr., from Louisiana, Arkansas and Texas Points. Yellow Pine Lumber. Switch Tracks and Switching, §4 (bb).
Rapson, Colo., to Camen, Okla. Coal. Procedure Before Commission, §10 (d).
Rapson, Colo., to Custer City, Okla. Coal. Procedure Before Commission, §10 (e).
Red Bay, Ala., to Paducah, Ky. Logs. Evidence, §31 (k).
Red Bay, Ala., to Paducah, Ky. Logs. Overcharges, §1 (p).
Redmond, Wash., to Rowena and Dalles, Ore. Cedar Poles. Through Routes and Joint Rates, §25 (f).
Red Wing, Minn., to New Orleans, La. Linseed Oil Cake. Reasonableness of Rates, §28 (5d).
Red Wing, Minn., to New Orleans. Linseed Oil Cake. Long and Short Hauls, §4 (aa).
Remsen, Ia., to Council Bluffs, Ia. Corn. Reasonableness of Rates, §7¼ (a).
Remsen, Ia., to Council Bluffs, Ia. Rates. Through Routes and Joint Rates, §15 (ll).
Remsen, Ia., to Kansas City, Mo. Corn. Routing and Misrouting, §4 (r).
Reno, Nev., from California Points. Lumber. Advanced Rates, §2½ (n).
Rhinelander, Wis., from Michigan Points. Pulpwood. Discrimination, §11 (c).
Richmond, Va. Rates. Switch Tracks and Switching, §3 (f).
Richmond, Va., to Fort Mifflin, Pa. Target Projectiles. Classification, §22 (c).
Richmond, Va., to Greensboro, N. C. Moulding Sand. Reasonableness of Rates, §28 (5u).
Richmond, Va., to Greensboro, N. C. Moulding Sand. Undercharges, §2 (d).
Richmond, Va., to High Point, N. C. Moulding Sand. Long and Short Hauls, §4 (dd).
Ridgewood, N. J., to New York, N. Y. Rates. Passenger Fares and Facilities, §5 (j).
Rives Junction, Mich., to Jacksonville, Fla. Rates. Proportional Rates, §4 (f).

Rives Junction, Mich., to Jacksonville, Fla. Rates. Water Carriers, §3 (c).
Rives Junction, Mich., to Jacksonville, Fla. Rates. Water Carriers, §5 (a).
Rockford, Ill. Rates. Equalization of Rates, §7 (a).
Rock Springs, Wyo., to Butte and Rocker, Mont. Coal. Weights and Weighing, §7 (a).
Rock Springs, Wyo., to Points in Southern Idaho. Bituminous Coal. Blanket Rates, §13 (k).
Rock, W. Va., to Hagerstown, Md. Lumber. Reparation, §16 (5q).
Rock, W. Va., to Harrisburg, Pa. Lumber. Long and Short Hauls, §4 (hh).
Rock, W. Va., to Harrisburg, Pa. Lumber. Long and Short Hauls, §5 (yy).
Rogers, Ark., to St. Louis, Mo. Rates. Through Routes and Joint Rates, §24 (d).
Roosevelt, Tenn., to Dell Rapids, S. C. Rates. Reconsignment, §3 (f).
Rose Hill, Ill. Anthracite and Bituminous Coal. Switch Tracks and Switching, §4 (m).
Roseland, La., to Chicago, Ill. Beets. Weights and Weighing, §5 (d).
Roswell, N. Mex., to Fort Worth, Tex. Alfalfa Hay. Long and Short Hauls, §7 (w).
Rouseville, Pa., to Kingston, Ont. Petroleum. Reasonableness of Rates, §28 (dd).
Royalton, Ill., to Trenton, Mo. Coal. Routing and Misrouting, §7 (x).
Rumford Falls, Me., to Memphis, Tenn. Paper Bags. Reasonableness of Rates, §28 (3m).
Rumford Falls, Me., to Woodland, Me. Bag Paper. Adjacent Foreign Country, §1 (e).
Ruston, La. Barrel Material and Lumber. Facilities and Privileges, §15 (l).
Rutland Railroad Stations to New York, N. Y. Marble. Through Routes and Joint Rates, §24 (b).

Sacramento, Cal., to Portland, Oreg., and Seattle and Tacoma, Wash. Rates. Evidence, §14 (5), (zz).
Saginaw, Mich. Dried Beans. Facilities and Privileges, §15 (4n).
Salem, W. Va., to principal markets of the East and West. Window Glass, C. L. Blanket Rates, §8 (l).
Salem, Neb., to Red Wing, Minn. Apples. Routing and Misrouting, §4 (j).
Salt Lake City, Utah from Texas, Oklahoma, Arkansas and Louisiana Points. Cotton Linters. Commodity Rates, §5 (j).
Salt Lake City, Utah., to Goldfield, Nev. Iron Mine Cars. Reasonableness of Rates, §28 (xx).
Saltville, Va. Soda. Evidence, §32 (x).
Sandy Point, Tex., to Manford, Okla. Cattle. Loss and Damage, §3 (e).
Sanford, Ala., to Middletown, N. Y. Yellow Pine Lumber. Routing and Misrouting, §7½ (a).
San Francisco, Cal., from Points East of Missouri River. Gas Cooking Stoves. Minimums, §7 (r).
San Francisco, Cal., from Points East of Missouri River. Gas Cooking Stoves. Overcharges, §1 (cc).
San Francisco, Cal., from Various Points East of Missouri River. Gas Cooking Stoves. Classification, §17 (7f).
San Francisco, Cal. Rates. Water Carriers, §3 (j).
San Francisco, Cal., to El Paso, Tex. Bean Butt Oil and Fish Oil. Reparation, §8½ (e).
San Francisco, Cal., to El Paso, Tex. Bean, Butt Oil and Fish Oil. Reparation, Short Hauls, §13 (b).
San Francisco, Cal., to Fallon, Nev. Structural Iron. Through Routes and Joint Rates, §15 (w).

San Francisco, Cal., to Galveston, Tex., New York, N. Y., Philadelphia, Pa., Baltimore, Md., Boston, Mass., and Charleston, S. C. Asphaltum, Barley, Beans, and Canned Goods. Long and Short Hauls, §10 (e).

San Francisco, Cal., to Missouri River Points and East thereto. Sugar. Long and Short Hauls, §4 (k).

San Francisco, Cal., to Montrose, Colo. Burlap Bags. Reasonableness of Rates, §2 (j).

San Francisco, Cal., to New York, N. Y. Fans. Reparation, §16 (m).

San Francisco, Cal., to Toledo, O. Automobiles. Allowances, §8 (2½), (a).

San Francisco, San Pedro and San Diego, Cal. Rates. Passenger Fares and Facilities, §14 (e).

San Jose, Cal. Rates. Discrimination, §4 (aa).

San Jose, Cal. Rates. Discrimination, §4 (d).

San Pedro, Cal., to Galveston, Tex., New York, N. Y., Philadelphia, Pa., Baltimore, Md., Boston, Mass., and Charleston, S. C. Asphaltum, Barley, Beans and Canned Goods. Long and Short Hauls, §10 (e).

Santa Clara, Cal. Rates. Discrimination, §4 (aa).

Santa Clara, Cal. Rates. Discrimination, §4 (d).

San Toy, Ohio, to Chicago, Ill. and Points in Illinois, Indiana and Michigan, and Lake Erie Ports. Bituminous Coal. Blanket Rates, §11 (i).

Sault Ste. Marie, Ont., to Michigan, Ohio, Pennsylvania, Indiana, Illinois and Missouri. News Print Paper in Carloads. Blanket Rates, §8 (f).

Savannah, Ga. Cotton. Evidence, §32 (f).

Schenectady, N. Y. Horses. Interstate Commerce Commission, §1 (ee).

Seattle, Wash. Green-salted Hides. Reasonableness of Rates, §7½ (l).

Seattle, Wash., to Chicago, Ill and Philadelphia. Fresh Fish. Reparation, §16 (5y).

Seattle, Wash., to Chicago, Ill. and Philadelphia, Pa. Fresh Fish. Through Routes and Joint Rates, §16 (h).

Seattle, Wash., to Eastern Points. Rates. Evidence, §13 (1), (w).

Seattle, Wash., to Ketchikan, Alaska. Dry Goods. Through Routes and Joint Rates, §13½ (q).

Seattle, Wash., to Ketchikan, Alaska. Dry Goods. Through Routes and Joint Rates, §13½ (w).

Seattle, Wash., to St. Paul, Minn. Fresh Fish. Express Companies, §36 (b).

Seattle, Wash., to St. Paul, Minn. Fresh Fish. Through Routes and Joint Rates, §15 (3e).

Shelbyville, Ind., to Fort Smith, Ark. Furniture. Reasonableness of Rates, §28 (ii).

Shelbyville, Tenn., to Grand Island, Nebr. Cedar Posts. Demurrage, §12 (e).

Shelbyville, Tenn., to Grand Island, Nebr. Cedar Posts. Overcharges, §1 (gg).

Shenandoah Division, Va.-W. Va., to Clinch Valley, W. Va. Flour and Grain. Discrimination, §3 (r).

Shepley, Wis., to Decatur, Ill. Cedar Poles. Cars and Car Supply, §8 (t).

Shreveport, La. Rates. Advanced Rates, §17 (g).

Shreveport, La. Rates. Commodity Rates, §2 (b).

Shreveport. Rates. Evidence, §13 (1), (f).

Shreveport, La. Rates. Evidence, §14 (1), (d).

Shreveport, La. Rates. Evidence, §14 (3), (c).

Shreveport, La. Rates. Evidence, §14 (3), (d).

Shreveport. Rates. Reasonableness of Rates, §28 (l).

Shreveport, La., from Mount Pleasant and Centerville, Tenn. Phosphate Rock. Long and Short Hauls, §4½ (b).

Shreveport, La., to Dallas, and Houston, Tex. Rates. Discrimination, §4 (rr).

Shreveport, La. Rates. Reasonableness of Rates, §28 (l).

Shreveport, La., to Kansas City, Mo. Cottonwood. Reasonableness of Rates, §28 (jj).

Shreveport, La., to Texarkana, Ark-Tex. Agricultural Implements, Beer and Beer Substitutes. Advanced Rates, §5 (2), (t).

Shreveport, La., to Texas Points. Acid Phosphate. Through Routes and Joint Rates, §13 (ll).

Sibley, La. Barrel Material and Lumber. Facilities and Privileges, §15 (l).

Silver Bow Gateway. Lumber. Through Routes and Joint Rates, §24 (c).

Silver Lake, Wis., to Chicago, Ill. Ice. Divisions, §4 (b).

Sioux City, Iowa., from S. Dakota, Nebraska, Iowa and Minnesota. Grain. Reasonableness of Rates, §28 (3p).

Sioux City, Ia., from Southwestern Blanket Territory. Yellow-pine Lumber. Advanced Rates, §15½ (b).

Sioux City, Ia. Scrap Iron. Classification, §17 (5w).

Sioux City. Scrap Iron. Reasonableness of Rates, §8 (e).

Sioux City, Ia. Scrap Iron. Reasonableness of Rates, §28 (4v).

Sioux Falls, S. D. Scrap Iron. Classification, §17 (5w).

Sioux Falls, S. D. Scrap Iron. Reasonableness of Rates, §8 (e).

Sioux Falls, S. D. Scrap Iron. Reasonableness of Rates, §28 (4v).

Sioux Falls, S. D., to Kansas City, Mo. Hogs. Through Routes and Joint Rates, §6 (m).

Sioux Falls, So. Dak., from St. Paul, Minneapolis and Minnesota Transfer, Minn., and LaCrosse, Wis. Beer and Other Malt Products. Advanced Rates, §5 (2), (l).

Sioux Falls, S. D., to St. Paul and Minneapolis, Minn. Rates. Sleeping Car Rates, (b).

Somerset, Ky., to Cincinnati, O. Hickory Spokes. Evidence, §30 (i).

Somerset, Md., to District of Columbia. Rates. Electric Lines, §4 (b).

Sondheimer, La., to New Orleans, La. Lumber. Export Rates and Facilities, §5 (g).

Soo, Mich., to Southern Michigan. Rates. Evidence, §63 (w).

Sorenson, Mich., to Minneapolis, Minn. Apples. Routing and Misrouting, §5½ (f).

Sorenson, Mich., to Minneapolis, Minn. Apples. Routing and Misrouting, §7 (k).

South Atlantic Ports. Cotton. Compress Companies and Charges, §2 (d).

South Atlantic Ports from Baltimore, Md., New York, N. Y. and Philadelphia, Pa. Rates. Evidence, §20 (ee).

South Atlantic Ports to Boston, Mass. Rates. Evidence, §20 (nn).

South Bend, Ind., to Cairo, Ill. Farm Wagons. Reasonableness of Rates, §28 (z).

South Bend, Ind., to Cairo, Ill. and Obion, Tenn. Farm Wagons. Through Routes and Joint Rates, §13½ (f).

South Bend, Ind., to Cairo, Ill. Farm Wagons. Through Routes and Joint Rates, §13½ (p).

South Carolina to Charlotte, N. C. Cottonseed. Evidence, §13 (6), (v).

South Carolina Points to New York, N. Y., Boston, Mass. and Eastern Points via Savannah, Ga. and Charleston, S. C. Clay. Advanced Rates, §17 (dd).

South Carolina. Rates. Any-Quantity Rates, I (n).

South Chicago, Ill., from Heineman's Mill and Tigerton, Wis. Slabwood. Cars and Car Supply, §8 (n).

South Chicago, Ill., from Heineman's Mill, Tigerton and State Line, Wis. Slabwood. Reparation, §16 (4j).

South Dakota from Arkansas, Texas, Mississippi and Louisiana Points. Hardwood, Cypress and Yellow Pine. Advanced Rates, §4 (a).

South Dakota from Porter, Crocker, and McCool, Ind. Rates. Basing Points and Lines, §2 (n).

South Dakota. Grain. Cars and Car Supply, §7 (w).

South Dakota Points from Minneapolis and St. Paul, Minn. Rates. Class Rates, §2 (u).

South Dakota Points from St. Louis, Mo., Chicago, Waukegan and Peoria, Ill., Milwaukee, Wis. Coke. Advanced Rates, §17 (bb).

South Dakota Points to various other States. Potatoes. Allowances, §8 (4½), (g).

South Dakota Points West of Mobridge from Anoka, St. Cloud, Milaca, Park Rapids, Cass Lake, Crookston, Thief River Falls, and Warroad, Minn. Lumber. Advanced Rates, §17 (ll).

South Dakota to Points in Illinois, Iowa, Ohio, Indiana and Various Other States. Potatoes. Allowances, §8 (4½), (f).

Southeastern Points from Chicago, Ill., Milwaukee, Wis., and Indianapolis, Ind. Rates. Proportional Rates, §2 (g).

Southeastern Territory. Rates. Classification, §20 (j).

Southeastern Territory. Distance Rates, §1 (a).

Southeast to Eastern Cities, Ohio River Crossings, New Orleans, South Atlantic and Gulf Ports, Navigable River Crossings and Interior Basing Points in Southeast and Mississippi Valley Territory. Rates. Long and Short Hauls, §7 (d).

Southeast to St. Louis, East St. Louis, Thebes, Cairo, Memphis, and the Ohio River Crossings. Lumber. Advanced Rates, §17 (rr).

Southeast to Various Points. Rates. Long and Short Hauls, §5 (gg).

Southeastern Wisconsin to Illinois Points. Condensed Milk. Classification, §22 (a).

Southern Arizona to St. Louis, Mo., New Orleans, La., and Galveston, Tex. Cotton. Compress Companies and Charges, §2 (m).

Southern California to St. Louis, Mo., New Orleans, La. and Galveston, Tex. Cotton. Compress Companies and Charges, §2 (m).

Southern Classification. Cocoa Butter. Classification, §16 (r).

Southern Classification. Cocoa Butter. Classification, §17 (4a).

Southern Classification. High Explosives. Explosives, (f).

Southern Classification. Iron. Classification, §17 (5r).

Southern Pennsylvania. Apples. Equalization of Rates, §4 (1), (b).

Southern Territory. Rates. Reasonableness of Rates, §28 (3r).

South. Grain. Evidence, §13 (1), (ii).

South Omaha, Nebr. Grain. Terminal Facilities, §3 (c).

South Pittsburg, Tenn., to Denver, Colo. Stoves. Reparation, §8½ (d).

South Pittsburg, Tenn., to Ohio and Mississippi River Crossings. Lumber. Discrimination, §8 (4), (b).

South St. Paul, Minn. Blanket Rates, §6 (t).

South to Ohio River Crossings and New England. Pig Iron. Differentials, §7 (a).

Southwest. Lumber. Blanket Rates, §6 (q).

Southwest to St. Louis, East St. Louis, Thebes, Cairo, Memphis, and the Ohio River Crossings. Lumber. Advanced Rates, §17 (rr).

Southwestern Points to Northern Destinations. Hardwood. Advanced Rates, §17 (ss).

Southwestern Virginia. Coal. Differentials, §7 (b).

Spartanburg from Eastern, Buffalo-Pittsburg Territory, Ohio and Mississippi River Crossings Points. Rates. Through Routes and Joint Rates, §13 (ddd).

Speeds, Ind., from North Jellico and Wilton, Ky. Coal. Reparation, §16 (iijjkk).

Spokane Gateway. Lumber. Through Routes and Joint Rates, §24 (c).

Spokane, Wash., from Brookhurst and Stanton, Cal. Cabbage. Reparation, §16 (5s).

Spokane, Wash. Rates. Reasonableness of Rates, §28 (5w).

Spokane, Wash., to Brookhurst and Stanton, Cal. Cabbage. Reasonableness of Rates, §28 (6c).

Springfield, Mass., to Spokane, Wash. Motorcycles. Classification, §17 (3a).

Springfield, Mass., to Spokane, Wash. Motorcycles. Through Routes and Joint Rates, §15 (t).

Standing Stone, Pa., to Detroit, Mich. Engine. Storage, §1 (a).

Standing Stone, Pa., to Detroit, Mich. Engine. Storage, §2 (l).

Stanley, Daviess County, Ky., from Various Points. Bags, Barrels, Bottles, Bungs, Corks, Glass Stoppers, Labels, Nails, Tissue Paper and Whiskey. Discrimination, §4 (y).

Stanley, Ky. Rates. Evidence, §14 (5), (kk).

Stanwood, Wash., to Minnesota Transfer, Minn. Shingles. Interstate Commerce Commission, §14 (b).

Star, Cal., to Verdi, Reno, Lovelock, Fallon, Winnemuca and Battle Mountain, Nev., Lyons, Ia., Salt Lake City, Utah and Chicago, Ill. Dry Lumber. Discrimination, §10 (a).

St. Croix Falls, Wis. Rye. Facilities and Privileges, §15 (5g).

St. Joseph, Mo., to San Francisco and Los Angeles. Pancake Flour. Classification, §17 (jj).

St. Joseph, Mo., to San Francisco and Los Angeles, Cal. Pancake Flour. Evidence, §12 (1), (ww).

St. Louis, Mo. Beer. Discrimination, §4 (i).

St. Louis, Mo. Bridge Tolls, I (c).

St. Louis, Mo., Brinkman, Okla. Farm Wagons. Additional Charges and Services, §5 (z).

St. Louis, Mo. Door Knobs and Door Locks. Classification, §5 (r).

St. Louis, Mo., from Oklahoma City, El Reno, Guthrie, Tulsa and McAlester, Okla. Hides and Pelts. Differentials, §6 (a).

St. Louis, Mo. Grain. Facilities and Privileges, §11½ (a).

St. Louis, Mo. Grain. Substitution of Tonnage, §2 (c).

St. Louis, Mo. Rates. Common Carrier, §3 (a).

St. Louis, Mo. Rates. Differentials, §8 (m).

St. Louis, Mo. Rates. Equalization of Rates, §3 (x).

St. Louis, Mo. Rates. Evidence, §2 (v).

St. Louis, Mo. Rates. Terminal Facilities, §9 (a).

St. Louis, Mo. Sugar. Evidence, §2 (g).

St. Louis, Mo., to all Points West and Southwest of the Missouri River and in Louisiana West of the Mississippi River. Grain and Seed. Allowances, §8 (3), (f).

St. Louis, Mo., to Coffeyville and Independence, Kans. Rates. Discrimination, §4 (oo).

St. Louis, Mo., to Coffeyville, Kans and Independence, Kans. Rates. Discrimination, §4 (ee).

St. Louis, Mo., to Counties of Codington, Hamlin, Kingsbury, Brookings, Lake and Minnehaha in Eastern So. Dak. Emigrant Movables. Advanced Rates, §7 (1), (a).

St. Louis, Mo., to Denver, Colo. Peroxide of Hydrogen. Classification, §17 (oo).

St. Louis, Mo., to East St. Louis and Madison, Ill. Grain and Grain Products. Through Routes and Joint Rates, §24 (a).

St. Louis, Mo., to French Lick, Ind. Unglazed Fire Clay. Evidence, §59 (t).

St. Louis, Mo., to Goldfield, Nev. Dry Litharge. Reasonableness of Rates, §28 (yy).

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